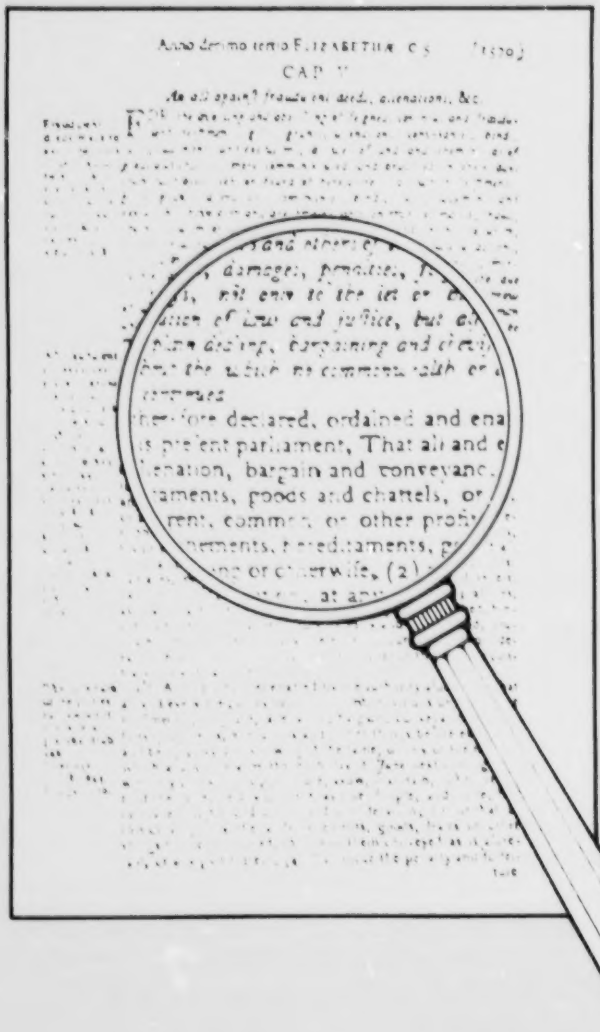
Law Reform
Commission of
Saskatchewan

Proposals for a Consumer Credit Act

Report to the Minister of Justice

Saskatchewan



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PROPOSALS FOR REFORM OF CONSUMER CREDIT LAW

Law Reform Commission of Saskatchewan
Saskatoon, Saskatchewan

Report to the Minister of Justice

February, 1989

The Law Reform Commission of Saskatchewan was established by **An Act to Establish a Law Reform Commission** proclaimed in November, 1973, and began functioning in February of 1974.

The Commissioners are:

Mr. Dale G. Linn, B.A., LL.B., Chairman.

Madam Justice Marjorie A. Gerwing

Mr. Gordon J. Kuski, Q.C.

Mr. Kenneth P.R. Hodges, B.A., LL.B. is Director of Research.

Mr. Michael J.W. Finley, B.A., LL.B. is the Legal Research Officer. The secretary is Miss Wanda Russell.

Professor Ronald C.C. Cuming, Q.C. of the College of Law, University of Saskatchewan, and Professor Roderick J. Wood of the College of Law, University of Alberta, are the Consultants to the Commission on consumer credit law.

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The Law Reform Commission Act.

> 6. The commission shall take and keep under review all the law of the province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law....

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Saskatchewan

Law Reform
Commission of
Saskatchewan

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The Honourable Bob Andrew
Minister of Justice
Province of Saskatchewan
REGINA, Saskatchewan

Dear Mr. Minister:

The study of consumer credit law and proposals for its reform are part of the overall study of personal property security law in Saskatchewan that has been an ongoing part of the work of the Law Reform Commission. The main thrust of the Commission's approach to consumer credit law has been an effort to identify the special problems associated with consumer credit as opposed to other forms of secured transactions and to develop legislation regarding consumer credit within the context of The Personal Property Security Act.

The Commission began work on consumer credit after the publication of "Proposals for a Saskatchewan Personal Property Security Act" in 1977. The Personal Property Security Act which stemmed from these proposals was enacted by the Legislature in 1980. The Commission issued "Tentative Proposals for a Consumer Credit Act, Part I: Background and Underlying Considerations, Part II: Statistics" in 1980. The following year a second paper entitled "Tentative Proposals for a Consumer Credit Act, Part III: Secured Consumer Credit Transactions, Summary of Recommendations" was issued. Work has continued on other aspects of consumer credit law as time and resources of the Commission have permitted.

This is the first of a series of final reports based on the earlier tentative proposals. The report recommends the enactment of a Consumer Credit Act, and a Pawnbrokers Act.

Pursuant to section 9 of the Law Reform Commission Act, the Commission submits its report entitled "Proposals for Reform of Consumer Credit Law" for your consideration.

Respectfully submitted this 14th day of February, A.D. 1989.

Dale G. Linn,
Chairman.

Madam Justice Marjorie A. Gerwing,
Commissioner.

Gordon J. Kuski, Q.C.,
Commissioner.

PREFACE

The law governing secured consumer credit transactions in Saskatchewan is in a sadly neglected state. Many of the legislative provisions originated during the Great Depression, and have since been eclipsed by the remarkable growth of the consumer credit market. When the legislation first came into force, consumer credit was generally marketed by the sellers of goods. Now it is marketed primarily by banks and other institutional lenders. The existing legislation is in need of an overhaul to better reflect the needs of consumers in today's credit marketplace.

In early 1975, the Law Reform Commission of Saskatchewan decided to undertake a thorough study of secured consumer credit transactions as part of a general review of personal property security law in Saskatchewan. In 1975 it issued a background paper describing in general terms the main issues involved in such a study. However, it soon became apparent to the Commission that a much broader study of consumer credit law was warranted. As a result, the Commission decided in 1976 to withdraw consumer credit from the personal property security study and to proceed with two separate studies: a study of general personal property security law, and a study of consumer credit law. The personal property security study was completed in 1977 and a final report was presented to the Attorney General. The Commission thereafter directed its attention to the consumer credit study, and Tentative Proposals were published in 1980 (Parts I and II), and in 1981 (Part III).

Consumer credit laws encompass a wide range of issues and subjects, and are shaped by economic and social factors. Because of the size and complexity of this study, it was decided to segment the project and publish each segment as soon as it was formulated. It was contemplated that upon completion of all segments, a Consumer Credit Code would be proposed, which would codify the many

aspects of consumer credit law. A precedent for this plan is the Uniform Consumer Credit Code recommended by the American National Conference of Commissioners on Uniform State law.

The Law Reform Commission has decided to depart from the original plan. Because work on several topics in the study has been held in abeyance and in others has not commenced, it was thought inadvisable to delay a final report on Part III - Secured Consumer Credit Transactions - until all parts of the study had been completed. Accordingly, this final report has been issued notwithstanding that tentative proposals on other topics in the study have not been published. The decision to recommend one omnibus draft statute that would codify all provincial consumer credit law has also been re-evaluated. The Commission has decided instead to recommend at this time the adoption of two proposed statutes: The Consumer Credit Act and The Pawnbrokers Act. Reports relating to farm credit and guarantees will be issued at a later date.

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1. INTRODUCTION

A. Background of the Consumer Credit Study

Very important changes have occurred during the two or three decades in the way in which consumer credit is marketed and used in Saskatchewan. Consumer credit is aggressively marketed by several different types of credit grantors including chartered banks, credit unions, trust companies, consumer loan companies, sales finance companies and department stores. It is made available in a variety of forms including direct loans, charge cards, secured sales contracts and revolving credit accounts. Consumer credit is so widely used that it has become an indispensable feature of family economics for most residents of the province.

It has been long recognized that the law is an important aspect of the structure of any system for the marketing and use of consumer credit. A "hands-off" policy is not possible. Credit grantors look to the law to provide remedies in the case of non-payment by borrowers. Several aspects of the law are involved, ranging all the way from the recognition and enforcement of a simple right of action for debt to the recognition of elaborate security agreements providing for rights of seizure of defaulting borrowers' property. Borrowers look to the law for regulation of unfairness and overreaching on the part of credit grantors. In some contexts this involves statutory control on business practices of credit grantors. In others it is nothing more than conditions on the exercise of the legal right that the law gives to credit grantors to enforce their credit contracts.

The late 1960's and the 1970's are often viewed as the "golden age" of consumerism. The imperfections and distortions of the consumer credit market were carefully scrutinized during this period. Legislatures proceeded on the assumption that consumer protection legislation was popular with voters. New

consumer protection legislation was enacted in all Canadian provinces. Some of this legislation was well designed; much of it was not. While the enthusiasm for consumer protection measures that swept the country had its effect in Saskatchewan, it did not produce the same volume of new legislation as it did in some other provinces. it is not entirely clear why this was the case. One possible explanation is that legislators felt that legislation such as The Limitation of Civil Rights Act and The Exemptions Act which had been enacted to deal with economic crises that residents of the province had faced in earlier times, was sufficient to address the problems that surfaced in the context of the mass marketing and use of consumer credit by Saskatchewan residents. Few other jurisdictions had similar legislation. Another explanation may be that the human and financial resources of the various private and public agencies involved in reform of this area of the law were not sufficient to permit the development of a large number of new proposals for consumer protection legislation. During this period a great deal of effort was invested in the preparation and implementation of The Consumer Products Warranty Act. Perhaps there was not a great deal left over for the study and development of protection measures in the area of consumer credit.

There is another explanation that cannot be overlooked. From the time of its creation in 1974 the Law Reform Commission was looked upon as the appropriate agency for the development of major new proposals in many areas of provincial law, including the law dealing with consumer protection. One of the early steps taken by the Commission was to undertake an assessment of the consumer credit market in Saskatchewan and to develop a long range plan for legal reform. That assessment led to the conclusion that to undertake a major project involving the preparation of extensive proposals for the reform of

consumer credit law was to put the cart before the hors. It was clear that the basic law dealing with credit transactions in which security is taken in personal property was very much in need of reform and modernization. Since most consumer credit transactions involve security in one form or another, it would have been a waste of effort to develop proposals for the reform of consumer credit law and then develop proposals for the modernization of the basic system in the context of which secured consumer credit transactions function. Accordingly, the decision was made at stage to undertake the preparation and implementation of The Personal Property Security Act. Once this legislation was in place, the Commission could then address those features of the basic system that require modification in order to reflect the peculiarities of the consumer credit market.

The Personal Property Security Act is perhaps the most complex and most revolutionary commercial law statute that has ever been enacted in Saskatchewan. While few difficulties were encountered during its implementation, there was a general feeling that the business community should be given a chance to get comfortable with it before the Legislature moved on to additional dramatic changes in the law relating to secured credit transactions. During this familiarization period the Commission continued to work on proposals which proceeded on the basic concepts and structure of The Personal Property Security Act but which made the necessary modifications to that structure to accommodate the peculiarities of the consumer credit market. The Personal Property Security Act has been in force in the province for six years. It has been well-received and has worked very well. The most dramatic feature of the legislation is that it greatly strengthens the legal position of secured credit grantors.

The time has now come for the province to consider further modernization of its law dealing with secured credit transactions. The second stage in this process is to implement measures that reflect the contemporary realities of the consumer credit market in Saskatchewan. The Law Reform Commission has set out in this report proposals for such measures.

The proposals contained in this report reflect contemporary thinking in the area of consumer protection. It was widely felt during the 1960's and 1970's that consumer protection was best implemented through direct governmental intervention in the form of administrators and licensing authorities. While this approach may have been effective in some contexts, the realities of the 1980's caused a reassessment of this approach. In many instances governments have become unwilling or unable to devote large amounts to costly administrative measures designed to protect consumer. In some jurisdictions that adopted the administrative approach, consumer protection has disappeared along with the budgets for consumer protection departments.

It is for this reason that an entirely different approach underlies the proposals contained in this report. Self-help is the basis of the system proposed. It is assumed that, given current conditions, consumers are more likely to get needed protection if they are given full information of their rights and every reasonable opportunity to exercise those rights. This approach does result in greater involvement by the courts. However, the Commission has recommended the use of the Provincial Court for this purpose. This should result in proceedings being inexpensive and expeditious.

Every attempt has been made to strike a fair balance between the need to make available to consumer methods through which they can protect their interests on the one hand and the need to ensure that honest and efficient

consumer credit grantors are not unduly burdened with complex rules and procedures. On first glance the system proposed in this report appears to be detailed and complex. However, the same was said of The Personal Property Security Act when it was first proposed. Growing familiarity with the provisions of the Act has resulted in widespread appreciation of its effect in modernizing and rationalizing general personal property security law of Saskatchewan. A careful examination of the proposals set out in this report will reveal that the draft Consumer Credit Act contemplates a system within which an honest and efficient credit grantor can function without major difficulty. It removes many of the anomalies of existing law that place some credit grantors at a competitive disadvantage. it frustrates the use of practices followed by a few marginal credit grantors but shunned by the great bulk of participants in the consumer credit market.

B. The Role of Contract

The basic legal framework of any consumer credit transaction is a contract between a credit grantor and a credit consumer. However, there are aspects of a consumer credit contract which make it unlike the classic model of a common law contract. Contracting in its simplest form involves the striking of a bargain between two parties. The law provides for the enforcement of contractual promises because it is assumed that each party to a contract wants some external mechanism to provide minimal guarantees of performance or compensation for non-performance of the other party's promises. The social and economic benefits accruing from a legal system which supports and encourages contracting through the enforcement of bargains, freely made, have long been recognized.

A consumer credit contract, while still a contract in the legal sense, is rarely the result of bargaining. In a consumer credit transaction, the borrower accepts, without negotiation, the terms offered to him by the credit grantor. The structure of the consumer credit industry dictates that credit be offered to the consuming public on the basis of standardized patterns which allow very little flexibility when dealing with individual credit consumers. Another major difference between the circumstances surrounding the formation of a consumer credit contract and the formation of a simple bargain is the extent to which the parties are aware of the legal significance of the contract they enter into and the potential consequences associated with non-performance. Consumer credit contracts are generally set out in writing and contain provisions which the credit consumer is unlikely to understand. This is particularly true of the consumer credit contracts that provide for the granting of security interests to the credit grantor. Under these contracts, the credit grantor is given the right to take certain measures to enforce payment of money owing under the contract. This frequently involves the right to seize and liquidate property belonging to the defaulting consumer. A degree of sophistication seldom found among credit consumers is required in order to gain full appreciation of the security and default provisions in a transaction of this kind. The problem is magnified by the fact that some credit grantors in Saskatchewan insert in their standard form contract terms which provide for rights not recognized in law.

The absence of free, informed consent to a contract has long been recognized as a basis for refusal on the part of the courts to give full contractual remedies. Any contract induced by an innocent or fraudulent misrepresentation, duress or undue influence, or a contract made under circumstances in which an unconscionable advantage exists for one of the

parties, will not be enforced by the courts. Significant disparity in bargaining power has induced legislators in many jurisdiction, including Saskatchewan, to enact legislation which limits the ability of credit grantors to exploit fully their position to the detriment of credit consumers.

The Commission has concluded that a legislative ordering of the relative rights of parties to consumer credit contracts is required if consumer credit is to be marketed in Saskatchewan on terms and under circumstances which are fair to both credit grantors and credit consumers.

C. The Role of Competition

All consumer protection measures need not involve legislative restrictions on the activities of credit grantors. Market forces, if allowed to function, can be an important tool of consumer protection. Several proposals contained in this paper are designed to encourage the development of competitive practices in most aspects of credit granting. Care has been taken to avoid recommendations which, if adopted, would inhibit innovation in consumer credit marketing or which would prevent or discourage potential competitors from entering the market.

At the same time, the Commission has been careful not to over-estimate the efficacy of these proposals. Many anti-competitive forces are prevalent in the consumer credit market, and direct legislative measures designed to combat these forces for the most part are beyond the jurisdiction of a provincial legislature. The Canadian consumer credit market is highly segmented, with the result that not all types of credit grantors are in direct competition. Even if these aspects of the market could be eliminated or controlled, there is no guarantee that effective competition would result. The complexity of consumer credit laws, marketing practices and the low level of public knowledge

concerning consumer credit has meant that few credit consumers have adequate knowledge of the factors which are important in assessing the various sources of consumer credit and in selecting the source which offers the most advantageous terms.

Further, it must be recognized that there is a segment of the consuming public in which no amount of knowledge, no matter how extensive or informative, will have much effect on consumption patterns. Susceptibility to media conditioning, and psychological imperatives make information conerning the workings of the consumer credit market irrelevant to some credit consumers. For example, a consumer may conclude that he can compensate for what he perceives to be a personal or social inadequacy through the acquisition of a high-cost automobile. He is not likely to be deterred from pursuing his chosen solution by information that a lower cost automobile within his financial capabilities is adequate for his transportation needs or that the credit needed to purchase the vehicle could be obtained from a cheaper source if he postpones the purchase until he has accumulated a significant down payment.

D. Deficiencies in the Present System

The Commission's research has disclosed no evidence of widespread abuse in credit marketing and collection practices in Saskatchewan. Most credit consumers are being treated honestly and fairly by credit grantors. This is likely a product of several factors. Most consumer credit is advanced by lending institutions such as credit unions and small branch banks which have long-term local interests to foster and protect. The level of social services such as tax supported medical, dental and educational facilities is high in Saskatchewan. Few residents are required to borrow to pay for necessities of life.

The lack of an immediate crisis is no justification for complacency or smugness, and cannot be used as a justification for failure to modernize consumer credit laws in Saskatchewan. Although abuses are not widespread, they do exist. Weaknesses in the legal structure should not be allowed to facilitate unacceptable practices by credit grantors or credit consumers. Consumer credit law in Saskatchewan is extremely complex, primarily because it is fragmented and lacks a coherent structure and policy. Developments in this area of the law have been totally ad hoc. As new problems were perceived, new laws were simply added to the list. Seldom, if ever, were old laws discarded or revised in order to integrate them with the new measures being adopted. Much of the law which presently regulates the rights of parties to consumer credit transactions predates World War II. Most of it was enacted at a time when many Saskatchewan residents were facing severe economic hardship produced by drought and depression. While this law embodies some very effective techniques for consumer protection, it has not been revised and updated in order to keep pace with fundamental changes which have since taken place in consumer credit marketing.

E. Private Enforcement of Consumer Rights

The enforcement and redress mechanisms which are included in consumer credit legislation are as important as the substantive rules which the legislation enacts. A declaration of rights or prohibition of conduct has little effect unless mechanisms exist through which the rights are recognized and the prohibitions enforced. Consequently, the Commission has paid particular attention to the need for effective enforcement and redress measures in the proposals for consumer credit legislation contained in this report.

A variety of enforcement mechanisms have been used in Saskatchewan and in other jurisdictions. The traditional approach has been to declare rights and

obligations in legislation and leave it to an individual to obtain enforcement of the law through the courts. However, there are weaknesses in this approach. The cost and delay involved in judicial proceedings often discourage consumers from seeking redress. Courts and lawyers are viewed by some consumers with fear and hostility. The result has been that as a restitutionary device, this method has been of value only to a small segment of the consuming public who are aware of their rights and who possess adequate resources and determination to pursue the recognition of those rights in court. Consequently, judicial enforcement of consumer credit law through consumer-initiated litigation has likely had little effect on any credit grantor's decision whether or not to comply with the law. The number of times a particular credit grantor will be faced with a court order to provide redress to an aggrieved consumer will be few and the cost of providing redress will be less than the gains which accrue from acting in contravention of the law.

While the Commission recognizes the weaknesses in the private enforcement system, it has reached the conclusion that this system has features which make it indispensable. Private enforcement gives to the aggrieved consumer the right to invoke the law on his own initiative, free from bureaucratic involvement. Most of the other available enforcement and redress mechanisms are administered by governments. While public enforcement measures can be very effective if fully employed, there is no guarantee that governments will always be disposed to provide the necessary resources. Too often, funding for consumer protection programs is viewed as "fat" to be trimmed from public expenditures in times of restraint. The enforcement of consumer rights should not depend solely on the availability of government funding. Another factor which has induced the Commission to recommend retention of the private enforcement system is the fear

that public administrators responsible for enforcement of consumer rights may not always act in the interest of consumers. In some situations regulators become "captured" by the very people that they are to oversee. This can result from factors other than neglect of duty on the part of the regulators. For example, the persons regulated may have more expertise than the regulator and, therefore, can influence his decision on technical matters. The complex nature of the consumer credit market may produce this result. Further, public enforcement measures focus heavily on prevention and are not generally designed to obtain redress or compensation for aggrieved consumers. A private enforcement system is better suited to deal with the claims of individual consumers.

For these reasons, the Commission has recommended the retention and, in some situations, the expansion of mechanisms for private enforcement of consumer rights. Many of the proposals set out in this report contemplate the judicial determination of rights in a simplified, summary proceeding in the Provincial Court. The involvement of legal counsel would not be necessary, and court costs would be small.

II. SECURED CREDIT TRANSACTIONS

A. Background Considerations

1. The Importance of Security in Saskatchewan

While accurate statistical information as to the importance of security in consumer credit marketing in Saskatchewan is not available, it is clear that the practice of taking some form of security for consumer debt, while not universal, is widespread. Consumer loan companies and some banks frequently take security interests in most of the borrower's personal property, while many banks and credit unions take security interests in high value items purchased with the proceeds of loans they make. Sales credit made available through sales finance companies and banks is totally or partially secured through security interests in the goods sold, and most department store credit is extended under revolving charge account contracts some of which contain security and cross-collateral provisions. In recent years, some consumer credit grantors have adopted the practice of securing large loans through mortgages on borrowers' equity in their homes.

Although some form of security agreement is employed in most consumer credit transactions in Saskatchewan, the availability of security is not generally the determining factor in deciding whether or not to make a loan. Other factors, such as the applicant's job, the stability of his family, and his past record are considered to be of greater importance in assessing risk. Security is also relevant when it comes to the cost of credit. Most credit unions relate loan charges to the kind of property which the borrower can offer as security. The cost of loans obtained from other credit institutions such as banks, trust companies and consumer loan companies is less dependent on the kinds of collateral offered as security, although some will offer reduced rates

where real property or bonds are available as security.

Saskatchewan credit grantors who take security for consumer debt do so for two reasons. The first is to provide some protection against unforeseen events which affect a borrower's ability to pay, such as loss of employment, sickness or changes in family structure. The second reason security is taken is to facilitate collection through threats of seizure and sale of the debtor's property. A lender who uses security in this way takes a security interest in most of the borrower's personal and household effects. It thereby acquires the power to threaten a defaulting borrower with the seizure of items of property which the borrower requires in day-to-day living. In this context, the value of the property taken as security is of little significance and seizures are rare. Consumer loan companies and some banks carrying on business in Saskatchewan take security interest in a wide range of consumer goods. They consider it to be a very important collection measure in cases where high-risk borrowers are involved.

2. The Difference between Secured Consumer Credit Sales and Secured Consumer Loan Transactions

Secured consumer credit sales transactions are those under which credit is provided by or through a seller. The two most significant types of secured credit sales transactions in use in Saskatchewan are single secured retail instalment sales contracts and revolving multi-purchase arrangements.

Single transaction instalment sales contracts are usually in the form of a contract under which the buyer gets an immediate right to possession of the goods purchased from the seller, but is given the contractual right to pay the price along with related credit charges by instalments over a period of time. The great bulk of secured contracts are assigned by the seller to sales finance

companies or banks with the result that the buyer ends up making payments, other than the initial down payment, to an assignee.

Under a revolving multi-purchase arrangement (usually referred to as variable credit arrangement) operated by large department stores, the consumer signs a master credit agreement through which goods can be purchased on credit from time to time without having to enter into an instalment repayment contract for each purchase. The buyer is given the option to pay the full amount owing or a specified portion of it at the end of the billing period. As long as the buyer is not in default, he is entitled to purchase further items and to have the purchase price of these items added to the balance owing by him. A variable credit arrangement contract may provide that the seller retains the property in all goods purchased until the purchase price of each item has been paid. Since each instalment payment made by the buyer is a sum determined by reference to the total balance owing at the end of the billing period, the agreement will contain terms which stipulate the method for allocation of payments and the point in time at which the ownership in each item vests in the buyer.

Some retailers maintain "lay away" plans under which the seller retains possession of goods sold to a buyer until the full purchase price is paid. While the agreement may provide for retention of title in the goods by the seller, the transaction is essentially a security agreement and the seller has only a security interest in the goods.

Secured consumer loan transactions are ones in which a lender advances a specific sum of money to a borrower in return for the borrower's promise that the amount plus a predetermined credit charge will be repaid in a lump sum or, more frequently, by periodic payments over a period of time. Security is taken in the form of security interest in goods purchased with the proceeds of the

loan and, in some cases, on other goods owned or thereafter obtained by the borrower. Less frequently, loans are secured by real property mortgages on the borrowers' homes, by pledges of negotiable securities, or by third party guarantees. Secured loan credit is also available to Saskatchewan consumers from pawnbrokers who advance small amounts of money on the security of pledged consumer goods.

Existing law treats secured sellers quite differently from secured lenders. Some aspects of this difference in treatment results from the divergent development of the laws affecting mortgages and conditional sales contracts. Other aspects of it are mere accidents of legislative history and are a product of the ad hoc nature of legislative development in this area of the law. The Commission has concluded that since secured consumer credit sales transactions and secured consumer loan transactions are used in practice to accomplish the same result, consumer credit law should recognize differences only insofar as function and effective policy implementation make it necessary to do so. Illogical disparity in treatment of these two methods of marketing consumer credit creates unnecessary complexity in the law and reduces the chance that a much greater degree of competition among the various types of credit grantors will develop.

3. Consumer Credit and The Personal Property Security Act

In June 1980, the Saskatchewan Legislature enacted The Personal Property Security Act[1] which effected major changes in the basic legal structure of personal property security law in Saskatchewan. Since the Act was designed to have general application, it contains very few provisions designed specifically

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[1] S.S. 1979-1980, c.P-6.1.

for consumer credit transactions. The Report of the Law Reform Commission of Saskatchewan that proposed the Act made it clear that special supplementary legislation designed to deal with consumer protection was intended.[2] If enacted into law, the proposals set out in this report would modify and supplement The Personal Property Security Act as it applies to consumer credit transactions.

Section 69 of the Act provides that in case of conflict between provisions of The Personal Property Security Act and provisions of consumer protection legislation, the latter will prevail. For greater certainty, it is recommended that the proposed legislation should make it clear that all of Part V of The Personal Property Security Act (dealing with rights and remedies on default) should not apply. The proposed legislation provides its own system of remedies. Part V of The Personal Property Security Act should apply only to the extent that a section is expressly incorporated by the proposed legislation.

The proposals contained in this report are designed not only to modernize and rationalize consumer credit law in Saskatchewan, but also to introduce some standardization in the terminology of consumer credit law. A primary source of the new terminology used in connection with secured consumer credit transactions is The Personal Property Security Act. As indicated elsewhere in this report, the Commission's recommendation for reform of secured consumer credit law are designed to supplement basic personal property security law as set out in that Act. Accordingly, the terminology of The Personal Property Security Act is an important but insufficient source of terminology. It is necessary to go beyond it in order to provide all of the terms and definitions required in a modern code of consumer credit law. Consequently, the Commission has looked to other

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[2] Proposals for a Saskatchewan Personal Property Security Act, July, 1977, at XXV.

sources. In selecting or developing the terminology used in this report, the Commission has attempted to focus on essential characteristics; and in the process, it has avoided the use of legal or institutional jargon.

4. Scope of the Proposed Legislation

If the consumer credit legislation which is proposed in this report is enacted by the Saskatchewan Legislature, the credit transactions that fall within its scope would be subject to a very different body of law than would be applicable to credit transaction not affected by it. Accordingly, it is necessary to define in clear terms what types of transactions would be governed by the proposed legislation. While other methods of determining the scope of application of consumer credit legislation are available, the Commission has concluded that the best way to identify the types of transactions that are to be regulated is to focus on the use to which the credit granted is to be put and the source of credit. It is therefore recommended that the proposed legislation should apply to a "consumer credit agreement", which is defined as "an agreement under which credit is granted to an individual for personal, family or household purposes by a person regularly engaged in the business of granting credit".[3] This definition therefore excludes credit transactions if the credit grantor is not in the business of granting credit, or if the borrower has acquired the credit for business purposes. The definition excludes credit granted to farmers and credit granted to businesses.

5. Forum

The level of court that is chosen to adjudicate consumer credit disputes is of profound importance. Legislative measures will confer empty rights to the

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[3] A similar formulation is adopted in The Consumer Products Warranties Act, R.S.S. 1978, c. C-30, s.2(e)(i) and in The Personal Property Security Act, s.2(h).

consumer if a complicated and expensive mechanism exists for obtaining redress. The Commission is of the opinion that the Provincial Court is the appropriate forum for such disputes. The Commission's view is fortified by the experience under The Consumer Products Warranties Act in which very few cases are decided by the superior courts. Instead, the vast majority of cases have come before the Provincial Court.

The Commission is further of the opinion that appeal from the decision of the Provincial Court should lie to the Court of Queen's Bench.

6. Recommendations

(1) Secured consumer credit sales transactions and secured consumer loan transactions should generally be governed by the same regulatory scheme. Differences in treatment should be restricted to those situations where it is necessary to implement effectively a policy of consumer protection.

(2) The proposed legislation should generally adopt the terminology of The Personal Property Security Act, and should supplement the provisions of that Act. The proposed legislation should, however, be in substitution for Part V of The Personal Property Security Act. The proposed legislation should provide its own system of rights and remedies on default of a consumer credit agreement.

(3) The proposed legislation should apply to a consumer credit agreement, defined as "an agreement under which credit is granted to an individual for personal, family or household purposes by a person regularly engaged in the business of granting credit".

(4) The Provincial Court should be the appropriate forum for disputes involving consumer credit agreements.

(5) An appeal from an order or decision of the Provincial Court should lie to the Court of Queen's Bench.

B. Property in Which Security Interests may be Granted

1. Security Interests in Necessaries and Items of Low Resale Value

The taking of a security interest to secure consumer debt provides the creditor with an alternative source of payment should the consumer debtor

default. However, in certain situations it is undesirable to permit the seizure of the debtor's property. The Commission sees little justification for laws that permit borrowers to encumber necessaries. If necessaries are seized, the borrower must look to social agencies for their replacement. The ultimate effect of such a system is to provide a public subsidy to private credit grantors. In addition, there is no justification for seizure of property that has little or no resale value. Seizures of this sort may be used to harass the debtor rather than to realize on an alternative source of payment.

The present law in Saskatchewan partially addresses these concerns. The Exemptions Act provides that non-purchase money security interests granted in respect of property necessary for the day-to-day maintenance of the debtor and his family are not enforceable.[4] The Exemptions Act does not prohibit the credit grantor from taking a security interest in necessaries; it merely prohibits him from enforcing the security interest. The consumer may thereby be misled into thinking that the credit grantor is entitled to seize the collateral. Furthermore, it would appear that the onus of proving the exemption is on the debtor where an exemption is claimed against a secured party.[5] It is unrealistic to expect the debtor to have a detailed knowledge of exemptions law. The legislation should prohibit outright the granting of security interests in necessaries, and should specifically enumerate the kinds of assets that are considered to be necessaries.

In some cases, however, an outright prohibition will not be practical. In particular, where the item is a motor vehicle its classification as a

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[4] R.S.S. 1978, c.E-14, s.3(1).

[5] Winnicky v Grande Prairie & District Savings & Credit Union Ltd., [1976] 1 W.W.R. 80 (Alta. S.C., T.D.); Davis v Avco Financial Services Canada Ltd., [1976] W.W.D. 65 (Sask. D.C.).

"necessary" may change, depending upon the circumstances of the debtor. Accordingly, the granting of security interests in such property should not be prohibited, but enforcement of the security interest should be prohibited where the motor vehicle is necessary for the efficient conduct of the debtor's business or is necessary to obtain or hold a job.

This policy in respect of necessaries must be modified where a purchase money security interest is taken (for example, where the sale of a washer and dryer is financed under a secured instalment sales contract or by way of a purchase money loan). A high-risk debtor may not be able to acquire high-cost necessaries if he can not give a security interest in the items purchased and thereby decrease the risk that the credit grantor undertakes in dealing with him. This apparently is the philosophy adopted in The Exemptions Act. Except in the case of food, clothing and bedding of the debtor, a purchase money security interest is not subject to the exemptions.[6] The exception for food, clothing and bedding should be retained. As a matter of social policy, items necessary for the survival of the debtor and his family should not be subject to seizure.

The Exemptions Act is deficient in that it does not provide sufficient safeguards against the seizure of items of low resale value. The Commission is of the opinion that no security agreement should be enforceable against collateral the total value of which does not exceed $300 in wholesale market value at the date of default. Furthermore, a credit grantor who gives a non-purchase money loan should not be permitted to take security in collateral the total value of which does not exceed $300 at the date of the agreement.

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[6] R.S.S. 1978, c.E-14, s.5(2).

2. Secured Credit Sales

A person who takes a security interest in the goods sold occupies a dual position: he is both a credit grantor and a seller. A difficult question is whether or not a seller should be permitted to take additional security over and above a security interest in the goods sold. There is increasing acceptance in North American jurisdictions that a seller should be restricted to a security interest in the goods sold.[7] In Saskatchewan, the effect of section 18 of The Limitation of Civil Rights Act[8] is that a seller who takes a purchase money security interest in the goods sold is limited to realization on such collateral: he cannot enforce any security interest taken in additional collateral.

On balance, the Commission is of the opinion that this position should not be disturbed. The seller, having knowledge and expertise of the goods sold, is in a position to insist upon a downpayment and repayment schedule which ensures that, in the event of default, the value of his collateral is sufficient to retire the obligation. Should the seller think that a security interest in the goods sold is inadequate, he remains free to sell the goods on credit and to secure the credit through a security interest in property of the debtor other than the goods sold (subject to the restriction on security interests in necessaries and items of low resale value). One exception must be made. A

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[7] Manitoba: Consumer Protection Act, R.S.M. 1970, c.C-200, s.56; Ontario: Consumer Protection Act, R.S.O. 1980, c.87, s.22. In the United States, see for example, California Civil Code, s.2984.2. The Uniform Consumer Credit Code allows the taking of a security interest in property other than the subject matter of the sale (in addition to cross-collateral) only in situations where the goods or services purchased are improvements to the debtor's existing property. See U.C.C.C. s.2.407.

[8] R.S.S. 1978, c.L-16.

person who sells land and chattels upon an entire consideration should be able to take a security interest in both the land and the chattels. It should be noted that The Limitation of Civil Rights Act provides similar exceptions.[9]

Some large department stores and sales finance companies use multi-purchase secured sales arrangements which require special treatment. Variable credit arrangements are used by large department stores. The buyer signs a master credit agreement through which goods can be purchased on credit from time to time. The buyer is given an option to pay the full amount owing or a specified portion of it at the end of the billing period. This type of arrangement avoids the administrative costs and inconvenience involved in the execution of a separate agreement each time a credit purchase is made. In addition, it is an advantage to the customer in that it consolidates all payments owing to a particular seller. Another type of multi-purchase arrangement, called a consolidation agreement, is used when a buyer who has bought an item under a standard instalment sales transaction wishes to purchase an additional item from the seller. A new agreement is executed under which the buyer's obligations under both purchases are consolidated.

Variable credit arrangements and consolidation agreements may give rise to a "cross-collateral" effect. For example, where two separate secured credit sale agreements are entered into, a default under one of the agreements will not affect the other: the seller's secured remedies are limited to those under the contract in default. However, when these two agreements are consolidated, a single default gives to the seller the right to proceed against all the goods.[10]

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[9] R.S.S. 1978, c.L-16, s.18(2).

[10] It is likely that section 18 of the Limitation of Civil Rights Act restricts the use of the Consolidation agreements. In Re Industrial Acceptance Corporation Limited and Bixby (1962), 38 W.W.R. 500 at 503 (Alta. D.C.) the court held that by virtue of a

The Commission has concluded that multi-purchase credit arrangements are an important feature of the consumer credit market in Saskatchewan, and should not be prohibited. They provide convenience to customers and permit efficient administration for sellers. Further, their continued use facilitates an important source of competition for other participants in the consumer credit market. Multi-purchase arrangements should, however, be regulated to the extent that they attempt to allocate repayments in such a way as to delay the date on which the seller's security interest is discharged. For example, a variable credit arrangement may be structured such that each instalment is pro-rated among the balances owing on each item. So long as any amount is owing under the agreement, a security interest in all items purchased is retained. Such an arrangement would have the effect of allowing the seller of an item to take a security interest on additional collateral to secure the price of that item.

The Commission is of the view that the total instalment payment under a consolidation agreement, and the total principal payment under a variable credit agreement, should be first applied to the payment of all obligations in the order in which the sales were made. When the item has been paid off, the security interest in it is discharged.[11] The Commission has also concluded that a statement should be provided to the buyer, at least every six months, indicating the amount owing on items that are subject to a security agreement, and stating that the security interest in all other items is discharged.

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similar Alberta restriction, an unpaid seller "cannot by a subsequent agreement, extend the lien on the goods covered by the first to other goods, nor increase the amount of his lien on the goods covered by the original conditional sale contract".

[11] A similar scheme for allocation of payments has been adopted in British Columbia. See Consumer Protection Act, R.S.B.C. 1979, c.65, s.34(3).

3. Secured Loan Transactions

The Commission has concluded that secured sellers should be prohibited from taking security interests in property other than the goods sold. The same limitation, however, should not be imposed on lenders who provide purchase money loans and who take a security interest in the goods purchased by the borrower. While there are similarities between a credit sales transaction and a purchase money loan, the position of the seller and the purchase money lender are not parallel in every respect. A lender is less able to ensure that the value of his collateral is sufficient to discharge the obligation in the event of default. Unlike the seller who is more likely to be acquainted with the market value of goods he supplies, the lender is not in a position to determine with the same degree of accuracy how much of a down payment should be required and how the repayment schedule in the loan transactions should be structured in order to minimize the possibility that the borrower's default will produce a deficiency.

The Commission is, however, of the opinion that blanket security arrangements should be restricted. Under such arrangements, the credit grantor takes a security interest in all present and after-acquired property of the borrower. Specific items of property are not identified; the security interest is enforceable against all the property, even though it may have been acquired long after the security agreement was executed. Under the Personal Property Security Acts of both Ontario and Manitoba, an after-acquired property clause is ineffective in respect of consumer goods unless the debtor acquires rights in them within 10 days after the secured party gives value.[12] The Commission agrees with this policy. It is therefore proposed that the security agreement

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[12] R.S.O. 1980, c.375, s.13(2)(b); R.S.M. 1973, c.5, s.14.

must identify by an itemized description the collateral that is taken as security, and further that no security interests may be taken in property that is acquired after the agreement is executed. This prohibition should not, however, apply where a purchase money security interest is taken in the after-acquired property, or where the after-acquired property is obtained as replacement for the items described in the security agreement.

The abolition of such clauses should not affect reputable credit grantors. The debtor's acquisition of additional property after the agreement is signed, being a completely fortuitous event, is a factor of little weight in assessing the risk involved in making the loan.

4. Security Interests in Real Property

In recent years, consumer credit grantors have adopted the practice of taking mortgages on real property to secure consumer loans. Most of these mortgages are taken on borrowers' interests in their homes and are subordinate to purchase money first mortgages. The Commission has concluded that the practice of securing consumer credit obligations through security interests in real property demands special attention.

The Commission has recommended that consumer credit grantors should not be allowed to take non-purchase money security interests in necessaries. Consistency would seem to dictate that non-purchase money security interests in homes should also be prohibited. The cost of housing increases the likelihood that if a consumer's interest in his home is lost through foreclosure, replacement will be financially impossible. It must be recognized, however, that the use of real property to secure consumer credit can be beneficial to the credit consumer in many circumstances. Even though a home falls within the category of necessaries, it is also likely to be the only consumer asset of

significant value, other than wages and salary. The Commission has concluded that the general prohibition of wage and salary assignments should continue.[13] A recommendation that a consumer's interest in real property generally or his home specifically be excluded as permissible security for consumer debt would mean that most consumers would be unable to offer assets of significant value when seeking loans or credit in amounts which ordinarily cannot be adequately secured by the types of goods most consumers own. Even if they are able to get the loans or credit they are seeking, they will be unable to benefit from lower credit service charges which are offered by most credit grantors when real property security is involved.

The Commission has concluded that consumer credit grantors should not be prohibited from taking security interests in real property, including the consumer's home, as long as appropriate restrictions are imposed to ensure that the practice is not employed unless warranted, and that undue hardship does not result to defaulting consumers.

As stated above, security interests in real property can be justified, at least in part, on the ground that consumers are thereby enabled to get larger loans or grants of credit that otherwise would be available to them. It follows that credit grantors should not be allowed to secure small amounts of credit through security interests in real property. If a credit applicant who seeks a small amount of credit is such a high risk that he must offer his interest in real property as security, credit should not be extended to him. The costs involved in taking the security interest and foreclosing in the event of default will be out of proportion to the benefits received by the consumer. Accordingly, the Commission has concluded that a credit grantor should not be

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[13] The Assignment of Wages Act, R.S.S. 1978, c.A-30, s.3.

allowed to take a security interest in real property unless the amount of credit secured is $5,000 or more.

5. Recommendations

(1) A secured party should be prohibited from taking a non-purchase money security interest in the following necessaries:

(a) a stove or oven;
(b) kitchen furniture;
(c) a refrigerator or freezer, or a unit that is a combination of a refrigerator and freezer;
(d) a washing machine;
(e) a clothes dryer.

(2) A secured party should be prohibited from enforcing a non-purchase money security interest in a motor vehicle where the motor vehicle is necessary for the efficient conduct of the debtor's business, trade, calling or profession, or for the debtor to obtain employment.

(3) A secured party should generally be permitted to take a purchase money security interest in necessaries, except that in no case should a secured party be permitted to take a security interest in the following basic survival needs: food, necessary clothing of the debtor and his family, bedding, a bed, heating apparatus, cooking utensils, heating and cooking fuel and health aids necessary to sustain health.

(4) A security interest should be unenforceable against collateral the total value of which does not exceed $300 in wholesale market value at the date of default; and no secured party shall take a non-purchase money security interest in collateral the total value of which does not at the date of the agreement exceed $300 in wholesale market value.

(5) A seller of goods or services should be prohibited from taking a security interest in any property of the debtor other than the goods sold or the property on which the services are rendered. An exception to this should be made where the sale is of land and chattels on an entire consideration.

(6) A consolidation agreement that creates a single schedule of payments should expressly provide that payments are to be allocated in the order that the obligations were incurred; and upon payment of an obligation, the security interest in property to which that obligation relates should be discharged. Before entering into the consolidation the debtor should be given the full information as to the effect of consolidation on his obligations under prior instalment sales agreements.

(7) A variable credit agreement should expressly provide that payments

are to be applied first to the payment of credit charges, and then to the payment of the items purchased in the order of entry into the account; and upon payment of an entry, the security interest to which that entry relates should be discharged.

(8) A seller who enters into a consolidation agreement or a variable credit agreement should be required to provide to the debtor at least once every six months a statement indicating the amount owing on the items subject to a security interest, and stating that the security interest in all other items is discharged.

(9) A lender who takes a purchase money security interest in the goods sold should not be prohibited from taking a security interest in other goods of the debtor. Blanket security arrangements, however, should be restricted: the security agreement should identify by an itemized description the property in which a security interest is taken.

(10) A secured party should not be permitted to take a non-purchase money security interest in real property of a consumer unless the amount secured exceeds $5,000;

C. Rights and Remedies on Default

The coming into force in 1981 of The Personal Property Security Act introduced to Saskatchewan a comprehensive enactment of the entire area of personal property security law. The proposals in this report recommend enactment of legislation that, for the most part, supplements this Act. There is one exception. The proposals respecting repossession or seizure of the collateral are in substitution of, and not in addition to, the system set forth in Part V of The Personal Property Security Act.

1. Default and Acceleration

Certain clauses in security agreements are designed to permit secured parties to call for full payment of the unpaid balance prior to the scheduled repayment date or to seize the goods even though the debtor is not in default and the goods are not at risk. Similar results might be achieved by a clause deeming default to have occurred in circumstances in which there is no objective basis for believing the goods are at risk.

There is legislation intended to prevent potential misuse of such clauses. Section 17 of The Limitation of Civil Rights Act provides that no chattel mortgage "shall contain a provision the application of which depends merely on the opinion of the mortgagee that a circumstance or state of things exists that affects his security". Section 16 of The Personal Property Security Act states that where a security agreement provides for acceleration of payment when the secured party deems himself insecure or decides that the collateral is in jeopardy, the secured party has the right to accelerate only where he has commercially reasonable grounds for this belief.

These provisions are not entirely satisfactory in the consumer credit context. The Personal Property Security Act provision provides adequate protection for consumers in regard to acceleration of payment. It does not apply, however, to seizure clauses. Section 17 of The Limitation of Civil Rights Act applies to default and seizure clauses, but only in respect to consumer credit agreements analogous to the old chattel mortgage.

In the Commission's opinion, consumer credit agreements should not contain clauses permitting acceleration or seizure except in cases where the debtor fails to make payment, where the debtor without notice permanently removes the collateral from the province, where the debtor without consent permanently disposes of his interest in the collateral, or where the secured party has commercially reasonable grounds for believing that his security is in jeopardy. This would extend the policy of The Personal Property Security Act in respect of acceleration to encompass seizure as well. The permitted grounds for acceleration or seizure other than jeopardy of security are essentially specific examples of jeopardy. Enumerating them in a consumer credit context will assist consumers by clarifying their rights. The Commission is also of the opinion

that the policy of section 17 of The Limitation of Civil Rights Act should be applied with respect to default clauses to all consumer credit agreements. Default provisions that are triggered simply by the secured party's opinion that a stipulated circumstance exists should not be permitted.

2. Deficiency Claims and the Election of Remedies

When a debtor defaults in payment under a security agreement, the secured party can seize or repossess the collateral, liquidate it, and apply the proceeds against the amount owing. Very often these proceeds are not sufficient to cover the full amount owing; there is said to be a "deficiency". To what extent should the law permit the secured party to make a claim for this deficiency? At first blush, it seems that the secured party should be allowed to enforce a deficiency claim. The security interest was taken merely to provide an alternative source of payment in the event of default. It in no way affects the fact that the debt is not fully paid.

A number of reasons have been given for the prohibition or limitation of deficiency claims. One, which has found favour in Saskatchewan, is that the creation of debt obligations should be minimized. Section 18 of The Limitation of Civil Rights Act provides that a seller who takes a security interest in the goods sold has a remedy only against the goods sold. He cannot claim for the deficiency. Nor can he waive his security interest and sue as an unsecured creditor.

The population of Saskatchewan, at the time of enactment of this statute, was faced with very severe economic conditions resulting from the collapse of national and international markets for agricultural commodities and from extreme drought conditions in the grain producing areas of the province. The Conservative Government of the day decided that drastic legislative measures

were necessary to prevent the economic collapse of major segments of Saskatchewan society. Inability to repay debt had become widespread. Section 18 was designed to prevent the creation of any new debt arising out of secured instalment purchase transactions. Default by buyers under such agreements would, at worst, result in loss of the goods purchased.

Another reason for regulating deficiency claims is to control dishonest or inefficient repossession and resale practices. An inefficient or dishonest sale will produce a lower return, which will in turn result in a greater deficiency claim. The Personal Property Security Act contains provisions which control the seizure and resale practices of secured parties. The debtor may recover from the secured party any loss suffered as a result of the secured party's failure to discharge the obligations imposed upon him by the Act. However, this mechanism does not provide adequate protection in consumer credit transactions: it is unreasonable to assume that the debtor will have the knowledge or commercial sophistication necessary to recognize the secured party's non-compliance.

A further reason for limiting deficiency claims is attributable to the lack of demand for used consumer goods. New consumer goods are readily available to the public on "easy" credit terms. The resale market for many types of consumer goods is weak. This is exacerbated by the fact that in many cases the resale is effected for less than fair market value since many secured parties do not have the facilities to market used goods. Accordingly, where security is taken in highly depreciable goods, the proceeds of resale are likely to be small. When the costs of seizure or repossession, storage and resale are deducted from these proceeds, there is likely to be little or nothing left to apply towards the reduction of the amount owing by the debtor. The net result

is that a person who has bought goods on credit but who then defaults loses the goods and yet is forced through a deficiency claim to pay all or most of the contract price for the goods. The Commission's policy is that the function of security in a consumer transaction is to provide an alternative source of payment in the event of a default. A security agreement should not be used to punish defaulting debtors. This policy dictates a stand against deficiency claims where the exercise of the secured party's seizure or repossession and resale rights has little or no effect on the amount ultimately claimed as a deficiency.

The Commission has concluded that secured parties, other than non-purchase money lenders, should not be permitted to make and enforce deficiency claims. There is sufficient evidence to indicate that the only effective way to protect consumers from abuses frequently associated with repossession and resale or from double loss in cases where highly depreciable collateral is involved is to eliminate deficiency claims.

The Commission is also of the view that the basic approach taken in section 18 of The Limitation of Civil Rights Act must be modified. That provision was designed to prevent the creation of debt arising out of secured sales transactions; it was not aimed at deficiency claims. New economic conditions have arisen, and the legislation should be tailored to meet present needs. Today the problem is not the creation of debt, but the double loss associated with repossession and resale. These problems can be remedied by requiring the secured party to elect between seizure and resale of the collateral and an action on the covenant for the balance owing. In other words, if the secured party elects to sieze, he would lose any right to claim the balance owing under the agreement. If he elects not to repossess, he is

entitled to payment of the balance owing. In either case, the borrower will not suffer the double loss of both losing the goods and having to pay for them.[14]

Section 18 of The Limitation of Civil Rights Act applies only to sellers, and not lenders. Lenders who use security agreements are permitted under existing law to obtain money judgments for the amount owing by borrowers, and are not restricted to the proceeds of their security. A lender who takes a purchase money security interest in the goods sold should be subject to the same election of remedies system that the seller is subject to. A lender who takes a purchase money security interest, like a seller who takes a purchase money security interest, will have the benefit of a direct connection between the value of the security and the amount of the loan. (The only difference between the two is that a purchase money lender will be able to take a security interest in additional collateral.) There is no such connection in the case of a non-purchase money lender. Unless a borrower can offer sufficient collateral to fully secure a loan, the lender must rely partially on the available security and judgment. Restricting the cumulative exercise of remedies under these circumstances would significantly increase the lender's risk.

Because the election of remedies system would not apply to non-purchase money lenders, alternative remedial measures are necessary to deal with the problems arising out of the liquidation of collateral taken in non-purchase money security agreements. Since the primary source of these problems is the

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[14] A "seize or sue" system governing secured sales credit agreements has been adopted by a number of provinces : Law of Property Act, R.S.A. 1980, c.L-8, s.49; Consumer Protection Act, R.S.M. 1970, c.C-200, s.53; Conditional Sales Act R.S.Nfld. 1970, c.56, s.12, British Columbia has adopted a seize or sue system governing both vendor and lender credit; Sale of Goods on Condition Act, R.S.B.C. 1979, c.373, s.19-20; Chattel Mortgage Act, R.S.B.C. 1979, c.48, s.23-24.

sale of seized collateral, a solution lies in an approach which eliminates the sale. A procedure under which the value of the collateral can be determined in a summary judicial proceeding will be discussed later in this report. This procedure should be applied to non-purchase money security interests. It should be recognized that this is only a partial solution: it is not as effective as a forced election of remedies. Nevertheless, when combined with the restrictions against property that may be taken as security under a non-purchase money loan, it provides an adequate response to the problems associated with the use of highly depreciable consumer goods as collateral by non-purchase money lenders.

Three subsidiary matters must be addressed. First, a seller who does not take a security interest in the goods sold, but rather takes a security interest in other personal property of the buyer should be treated as if he were a non-purchase money lender. The election of remedies system should apply only to secured parties who take purchase money security interests.

Second, a secured party who waives his security and elects to exercise his rights as an unsecured creditor should be allowed to have the collateral seized in execution issued on a judgment obtained by him. However, if these goods are seized, his rights should be restricted to the amount realized from the sale of the goods. While it may appear to be anomalous to allow a secured party who has waived his security to turn around and have the collateral seized in execution, such a right does not frustrate the underlying purpose of election of remedies restrictions. If the secured party cannot gain more through execution against the goods than he can through realization on his security interest in them, there appears to be nothing objectionable in allowing him to surrender his security and proceed by way of execution. Under existing Saskatchewan law, a

seller who obtains judgment against a debtor is not subject to exemption laws when he seeks to have his judgment enforced by writ of execution against the goods sold by him to the debtor.[15] This special priority should not apply in the case of an election of remedies. A seller who has elected to proceed against the debtor as an unsecured creditor should have no greater right to seize exempt property than does any other unsecured creditor.[16]

Finally, there may be circumstances where the debtor has acted in such a manner as to hinder the secured party's ability to realize on the security, or where it would be inequitable to require the secured party to select one of the two available alternatives. In these special circumstances it is recommended that the court be permitted to make such an order as it deems expedient so as to place the secured party in the position he would otherwise have occupied.[17]

3. Seizure of Consumer Goods

(a) The Approach to Regulation

The Commission is of the opinion that closer regulation is required in respect of the practices employed by consumer credit grantors when they are realizing on security. But the legislative response must not be so cumbersome that defaulting debtors can frustrate the legitimate exercise of the secured party's rights, or so expensive that the cost involved in realizing on the security is prohibitive.

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[15] The Exemptions Act, R.S.S. 1978, c.E-14, s.5(1).

[16] An analogous system is adopted in The Agricultural Implements Act, R.S.S. 1978, c.A-10, s.41(4)(b).

[17] A similar provision is made in subsections 18(5) and (6) of The Limitation of Civil Rights Act, R.S.S. 1978, c.L-16.

One possible legislative response is to require that all seizures be made by a judicial officer, such as a sheriff.[18] This approach has, in the past, been used in Saskatchewan. Prior to the implementation of the comprehensive personal property security system in 1981, The Distress Act provided that all seizures under chattel mortgages had to be undertaken by a sheriff or by "a person duly authorized by a sheriff".[19] However, upon the enactment of The Personal Property Security Act this approach was restricted to seizure of a house trailer.[20] In practice, this protection was often circumvented by sheriffs who appointed secured creditors as sheriff's agents for the purpose of effecting seizure.

The Commission prefers measures that do not involve significant participation of public officials, other than the courts. Other methods can be just as effective, and far less expensive and bureaucratic. Elaborate government-operated structures designed to protect debtors often fall far short of the mark because they are underfinanced or poorly administered, or both. The failure on the part of most sheriffs in Saskatchewan to implement the legislative objectives contained in The Distress Act can be attributed to these factors.

(b) Dispute Resolution

One of the most significant problems encountered in consumer debtor-creditor relations is the abuse of seizure powers by secured creditors in cases where the debtor is not in default, or believes he is not in default, but has simply stopped payment because his rights under the contract or under the law

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[18] This approach has been adopted by Alberta: see the Seizures Act, R.S.A. 1980, c.S-11.

[19] R.S.S. 1978, c.D-31, s.6.

[20] Ibid., ss.6-6.4, as amended S.S. 1979-80, c.23, s.5.

have been ignored by the creditor. The creditor can use the threat of seizure of the collateral as a method of overcoming the debtor's insistence that his rights be recognized. The fear of loss of goods which the debtor needs or in which he has a significant equity should be removed as a factor in the determination by a debtor whether or not to assert his rights. Under existing law, a debtor can obtain from a court restitution or compensation for illegal seizure, but this involves the initiation and maintenance of costly and time-consuming judicial proceedings. As a result, it is rarely undertaken.

The Commission has come to the conclusion that debtors should have available to them a system through which disputes can be adjudicated quickly, inexpensively, and free from the compulsion which threatened loss of collateral entails.[21]

Once it is accepted that a debtor should have an opportunity to assert his rights free from the fear that to do so will induce retaliatory measures by a creditor, the further question arises whether the right to invoke the dispute resolution process should be available before seizure or whether it should be available only after seizure but before disposition of the collateral. Many credit grantors assert that any system which prohibits them from acting swiftly once the decision has been made to seize will substantially increase the risk of loss to them. They point out that debtors who are in default and realize that the collateral in their possession will ultimately be seized, or who for

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[21] A similar scheme is adopted in sections 19 to 36 of The Limitation of Civil Rights Act, but is limited in scope to certain classes of articles set out in clause 19(b). Alberta has a more expansive scheme. The sheriff, after seizing the property, serves the debtor with a notice of objection which gives the debtor 14 days within which to object to the seizure. See the Seizures Act, R.S.A. 1980, c.S-11, ss.26-31. This provides a mechanism for dispute resolution before the collateral is released to the secured party.

some other reason are angry with the creditor, are likely to take retributive measures such as damaging the collateral through intentional acts or neglect, hiding the collateral, or secretly leaving the jurisdiction with it.

On the other hand, a unique Canadian judicial development casts serious doubt on the proposition that secured parties at present possess the right to seize without making a demand for payment and allowing a reasonable time to pay.[22] Furthermore, it is the improper use of the threat of seizure that is the coercive practice under attack. If the right to redress is available only after the collateral is seized, the problem remains. A debtor who is in need of the collateral (for example, an automobile to get to work) may well be forced to surrender his rights if he knows that assertion of those rights will still result in the temporary loss of the collateral.

The Commission has reached the conclusion that a debtor who claims to have a right to retain collateral in his possession should be given the opportunity to prevent seizure of the collateral, unless there is a likelihood that the collateral will be lost, damaged or neglected by him. The Commission recommends the adoption of the following system. Before a secured party may take possession of collateral, he must give at least ten days' notice of his intention to repossess. The debtor is thereby given the opportunity to apply to the Provincial Court for a hearing at which time it can be determined if in fact there has been a default that justifies repossession of the collateral.

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[22] See Ronald Elwyn Lister Limited v Dunlop Canada Limited, [1982] 1 S.C.R. 726; Bank of Nova Scotia v Ham (1986), 29 D.L.R. (4th) 427 (Sask. C.A.). It should be noted that is has been held that this line of authority does not represent the law in England: see Bank of Baroda v Panessar, [1986] 3 All E.R. 751 (Ch.D.). The reasonable notice doctrine is not restricted to demand loans or to receiverships; see Canada Trust Mortgage Co. v 562498 Ontario Ltd. (1987), 62 O.R. (2nd) 741 (H.C.J.).

Once the secured party has been notified that there has been an application for a hearing, the secured party should be prohibited from taking any further step to seize or dispose of the collateral until the dispute is resolved by the court. The court may determine whether or not the secured party is entitled to seize the collateral, or it may direct that an action be brought or an issue be tried. It should be noted that this procedure comes into play only if the debtor makes an application. If the debtor does not make an application, then the secured party is free to repossess the collateral.

A number of exceptions to this system should be made. The secured party should not be required to serve such notice on the debtor where the debtor has voluntarily surrendered the collateral. Nor should notice be required where the secured party has reasonable grounds to believe that the collateral has been abandoned by the debtor, that the collateral is perishable or will decline substantially in value immediately after default, or that the secured party's interest in the collateral is otherwise placed in jeopardy.[23] In such cases the secured party should have the right to immediately seize the collateral.

(c) Redemption and Cure

Section 62 of The Personal Property Security Act contains provisions governing the debtor's right to redeem the collateral or to reinstate the agreement. The Commission is in general agreement with this policy. There are, however, a number of modifications that should be made to this system in translating it into the consumer context.

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[23] A similar, though more restricted, exception is made to the common law requirement of pre-seizure notification: see Mister Broadloom Corp. (1968) Ltd. v Bank of Montreal (1983), 4 D.L.R. (4th) 74, at 80 (Ont. C.A.).

A primary concern is that the consumer in most cases will not know of his right to redeem or reinstate. This information deficiency can be cured by requiring that every security agreement contains information concerning the debtor's right to redeem or reinstate. In addition, the consumer should be informed of his right to redeem or reinstate, and given information regarding the amount required to redeem or reinstate, and the time within which these rights must be exercise. In the case of a voluntary surrender of collateral or where there is an immediate seizure because the collateral is at risk, no notice of intention is required. In this case, notice of the right to redeem or reinstate should be given at the time of surrender or seizure of the collateral.

The period of time allowed for reinstatement of the agreement by paying a missed payment should be such that the debtor will have income available to him with which to pay the secured party. Since most consumer debtors are wage-earners, a thirty-two day period should be selected, as this will in most cases ensure the debtor's next payment of wages or salary is within the period. Accordingly, the period for reinstatement of the agreement should be 32 days after the notice is served on the debtor. If the debtor applies for a hearing, and the court determines that the secured party is entitled to seize, then a further period for reinstatement should run for such time as the court may decide.

The secured party should not be compelled to hold the collateral for the 32-day period if the collateral is perishable, if it would decline substantially in value, if the cost of care and storage would be disproportionate to the value of the collateral, or if the debtor voluntarily surrenders his right to reinstate. A similar approach is presently taken under The Personal Property

Security Act.[24]

The Commission has concluded that consumer debtors should be entitled to exercise a right of redemption at any time during the life of a security agreement as long as the secured party is given reasonable compensation for losses suffered as a result of premature termination of the agreement. The right to redeem may be important to a debtor in a number of situations, the most important of which is likely to be the opportunity to sell the collateral on advantageous terms if he can transfer an unencumbered title to the buyer. The secured party has no interest in the collateral except to the extent that it secures an obligation. Once the obligation is discharged, this interest disappears.

A number of Canadian jurisdictions have enacted consumer protection legislation which restricts a secured party's right to seize collateral as a result of a minor default occurring at a time when only a small portion of the debt secured remains unpaid.[25] In other words, the loss suffered by the defaulting debtor as a result of having the collateral seized is viewed as being out of proportion to the risk which the secured party faces if the collateral is unavailable to satisfy the debt.

The Commission has concluded that the need for this type of restriction on credit grantors' remedies is not likely to be great if the recommendations in this report respecting reinstatement and protection of a debtor's interest

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[24] Section 59(15).

[25] Consumer Protection Act, R.S.O. 1980, c.87, s.23; Consumer Protection Act, R.S.M. 1970, c.C-200, ss.49, 57; Sale of Goods on Condition Act, R.S.B.C. 1979, c.373, s.23; Chattel Mortgage Act, R.S.B.C. 1979, c.48, s.26. Furthermore, in Ontario a secured party who seizes consumer goods where 60% of the indebtedness secured is paid must dispose of the collateral within 90 days: see the Personal Property Security Act, R.S.O. 1980, c.375, s.61(1).

in a surplus are adopted. If a debtor has paid a major portion of the obligation secured, he is likely to have a large enough equity in the collateral to obtain a secured loan from other sources with which he can cure his default or redeem the collateral. If the collateral is seized and the default is not cured, any interest which he has in the collateral will be reflected in the surplus which must be returned to him.

4. Valuation of Collateral

The Personal Property Security Act provides that on default of payment by a debtor the secured party is entitled to seize the collateral, and after complying with the notice requirements he may sell the collateral. Empirical research in the United States demonstrates that the forced sale of seized consumer goods is unlikely to permit the recovery of the full market value of the goods.[26]

This problem manifests itself in two distinct forms. First, the inadequacies of the "seizure and sale" system (resulting in "fire sale" prices being obtained) may deprive the debtor of a surplus to which he would otherwise be entitled. Second, in those cases where the secured party is entitled to sue for the deficiency, a sale of the collateral will often greatly inflate the amount of that deficiency.

The solution to these problems lies in a system that eliminates the sale. The secured party's remedy in the case of a purchase money security interest is to retain the goods in satisfaction of the debt, or to surrender the goods and sue for the amount unpaid. But retention of the goods by secured parties upon

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[26] See P. Shuchman, "Profit on Default: An Archival Study of Automobile Repossession and Sale" (1969), 22 Stan. Law Rev. 20. See also B. Clark, "Default, Repossession, Foreclosure, and Deficiency: A Journey to the Underworld and a Proposed Salvation" (1972), 51 Ore. Law Rev. 302.

seizure is only acceptable if the debtor has easy access to court for an order valuing the collateral in those cases where there may be a surplus. Accordingly, the Commission proposes that the debtor should be entitled to apply to court for a valuation of the collateral, and that a secured party should serve the debtor with notice of his right to obtain a valuation of the collateral where sixty percent or more of the total amount owing has been paid. Any surplus value must then be turned over to the debtor.

In cases where the secured party is suing for the deficiency (i.e., under non-purchase money loans), a valuation should be obtained in every case. A valuation should not, however, be required where the debtor in writing has agreed to the value of the collateral.

5. Restrictions on Seizure

Sections 36 and 37 of The Personal Property Security Act contain special legislative measures designed to permit secured parties to retain security interests in goods which become affixed to reality or which become attached to other goods in such a way that they lose their identity. The removal of such collateral in some cases may result in extensive damage to the property from which it is removed. The Commission proposes that a debtor in these circumstances may apply to court for an order prohibiting the secured party from removing the goods. The secured party should be required to give notice to the debtor informing him of his right to so apply where the secured party intends to remove a fixture or accession.

The Commission is also of the opinion that upon default the secured party should be entitled to take possession of the collateral only if possession can be taken without unauthorized entry into a dwelling or without the use of force or other breach of the peace. In addition, no security agreement should contain

terms permitting unauthorized entry to a dwelling or damage to property. The secured party should be entitled to apply to court for an order directing a sheriff or his bailiff to effect seizure should such circumstances arise.

In certain cases a debtor under a non-purchase money security interest may be faced with the seizure of collateral that may have little or no market value. In such cases, the debtor should be entitled to apply to court for an order prohibiting its seizure.

G. Recommendations

(1) Default provisions in a security agreement that depend upon the opinion of the secured party that a circumstance or state of things exists should be prohibited.

(2) Grounds for acceleration of the obligation or for seizure of the collateral should be restricted to cases where:

(a) the debtor fails to make a payment;
(b) the debtor permanently removes the collateral from the province without notice;
(c) the debtor without consent permanently disposes of his interest; or
(d) the secured party has commercially reasonable grounds to believe that the collateral is or is about to be placed in jeopardy.

(3) Upon a default by a debtor under a security agreement that in whole or in part creates a purchase money security interest, the secured party should be required to choose between seizing the collateral or waiving his security interest and enforcing his right as an unsecured creditor.

(4) A secured party who elected to waive his security and exercise his rights as an unsecured creditor and who has the goods seized and sold under execution should not be permitted to recover more than the amount realized from the sale of such goods.

(5) The special priority rule afforded to a seller by subsection 5(1) of The Exemptions Act should not apply to a seller who has waived his security interest.

(6) The court should be empowered to permit the cumulative exercise of the secured party's remedies where it is shown that:

(a) the debtor has wilfully damaged the collateral or that it has been seriously damaged through his neglect;
(b) the debtor has removed portions of the collateral and has not

replaced them with items of equivalent value;
(c) the debtor has hidden the collateral and has refused to disclose its whereabouts;
(d) the debtor has disposed of the collateral in violation of the security agreement; or
(e) it would be inequitable for any other reason to require the secured party to elect his remedy.

(7) The following system should be adopted respecting seizures under consumer credit agreements:

A. A secured party who intends to seize collateral shall give notice to the debtor of his intention to do so, and shall not seize the collateral until ten days after serving the notice. The notice shall also inform the debtor of his right to apply for a hearing. This notice is not necessary where the debtor has voluntarily surrendered the collateral.

B. A secured party may immediately seize the collateral without giving notice where:

(a) the collateral has been abandoned by the debtor;
(b) the secured party's interest is placed in jeopardy;
(c) the collateral is perishable; or
(d) the collateral will decline substantially in value if not disposed of immediately after default.

In such a case, the secured party shall at the time of seizure give notice to the debtor of his right to apply for a hearing.

C. The secured party shall not dispose of collateral until 32 days after notice is given to the debtor of his right to apply for a hearing, unless the goods are perishable or there is some other reason for the disposal.

D. If the debtor applies to the Provincial Court for a hearing, the secured party, upon being so notified, shall take no further step to seize or dispose of the collateral until the court determines whether the secured party has the right to seize the collateral.

E. Every consumer credit agreement shall inform the debtor of his right to reinstate the security agreement or to redeem the collateral.

F. The debtor may be permitted to reinstate the security agreement within 32 days after the notification of his right to apply for a hearing; and if the debtor so applies within a further 22 days after a determination by the court that the secured party is entitled to seize the collateral. A debtor may not reinstate the agreement more than twice a year.

G. The debtor may redeem the collateral by fully paying out the

agreement at any time before the debtor's interest in the collateral is extinguished. The debtor's rights in the collateral are extinguished:

(a) upon the expiration of 32 days after notice of the right to a hearing, where the debtor does not apply for a hearing;
(b) upon the expiration of 22 days after a determination by a court that the secured party is entitled to seize the collateral, where the debtor applies for a hearing; or
(c) upon a valuation order being made.

(8) An application for a valuation of collateral may be made by the debtor or other interested party within the time in which the debtor may reinstate the security agreement. Upon being notified of this application, the secured party shall take no further step to dispose of or otherwise deal with the collateral.

(9) Where 60 percent or more of the obligation secured by a security agreement has been paid at the date of seizure or surrender of the collateral, the secured party shall give notice to the debtor of his right to a valuation of the collateral.

(10) Where the secured party intends to make a claim for the deficiency he shall obtain a valuation of the collateral in order to determine the amount still owing.

(11) The court in determining the wholesale market value of the collateral may take into consideration evidence formally presented to the court, published information of the value of property of the same or similar kind and condition as the collateral, and any other relevant information, whether or not presented as formal evidence. A valuation by the court is not necessary where the debtor after receiving complete information agrees in writing to the valuation.

(12) A secured party who intends to remove goods that have become affixed to the debtor's land or that have become an accession must give 15 days' notice of such intended seizure in order to permit the debtor to apply for an order prohibiting or restricting the removal.

(13) The secured party should be permitted to take possession of the collateral only if possession can be taken without unauthorized entry into a dwelling, use of force, or other breach of the peace. No security agreement shall contain a term permitting a secured party to enter a dwelling or to cause damage to property. The secured party should be entitled to obtain an order of the court directing a sheriff or bailiff to effect seizure in such cases.

(14) The court may prohibit seizure of collateral subject to a non-purchase money security interest on the ground that because of its nature, age or condition it is unlikely to be of sufficient market value to justify its seizure.

D. Leases

1. The Growing Importance of Leasing

It appears that chattel leases are being used as a vehicle for marketing consumer credit, although accurate statistics are not available. If trends established in jurisdiction in the United States are any indication of future developments in Canada, the Canadian consumer credit industry can be expected to expand significantly the use of leases over the next few years. Accordingly, a comprehensive scheme of regulation of the kind proposed in this study must include provisions dealing with consumer leases.

2. Disguised Sales Transactions

The term "lease" is used to label a number of different types of transactions, ranging from short-term arrangements such as daily or weekly automobile rental contracts to long-term leases which in duration are equivalent to the useful life of the property leased. Labels and lease provisions are often used to disguise the fact that what is involved is not an agreement under which the use of property is contracted for, but a contract under which the so-called lessee is, in fact, the buyer of the goods, and the lessor is a seller or financer. The function of a true lease or bailment is to provide to a lessee the exclusive use of property for an agreed period at the end of which possession of the property would be returned to the owner. The payments made by the lessee are for the use of the property. A credit sales agreement is an arrangement under which ownership rights in goods are purchased. The payments made bear no relationship to the use of the chattel but are, in fact, allocated to the purchase price of the goods.

Many so-called "leases" are drawn in such a way as to require the lessee to pay the equivalent of the full purchase price of the goods "leased".[27] If the consumer is required, over a period of time equivalent to the useful life of the property, to make payments that in aggregate amount to the market price of the goods involved plus the interest cost of the lessor's investment capital, it is not difficult to conclude that the arrangement essentially is a credit sales contract. The same result is produced if the contract requires the consumer to pay to the "lessor" in the event of default the equivalent of the total purchase price plus credit charges, or this amount reduced by the amount realized from the proceeds of the sale of the goods. Similarly, if a "lease" is one under which the consumer makes payments for a specific period of time shorter than the useful life of the goods involved, after which the goods are sold by the lessor and the consumer must pay the difference between a predetermined amount and the proceeds of the sale, the effect of the transaction is that the consumer has paid for the goods. In effect, the consumer's obligation under the contract is to pay the total purchase price less any amount which is yielded on a sale of the goods.

The Commission has concluded that in order to provide a rational and consistent system for the regulation of consumer credit marketing, it is necessary to go beyond facades and recognize the essential nature of all types of transactions under which consumer credit is marketed. Accordingly, the Commission is of the view that any agreement under which a consumer is required to pay to a creditor directly or indirectly a sum substantially equal to or greater than the retail value of the goods at the date of the agreement should

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[27] At present such "leases" will be considered to be a security agreement (in effect a disguised credit sale contract), and will be subject to the provisions of The Personal Property Security Act.

be treated as a credit sale. This is so even though a transaction which falls into this category is labelled a "lease".

The inclusion of certain types of "leases" in the definition of a sale will result in the application to such transactions of all recommendations dealing with secured credit sales. Accordingly, those recommendations dealing with limitations on the type of collateral available as security, election of remedies, right to surplus, dispute resolution, redemption and cure, and performance defences against third parties will apply to leases which are in reality disguised sale transactions.

The conclusion that certain types of so-called leases are, in fact, secured consumer credit sales agreements will cause some adjustment problems for credit grantors engaged in leasing, particularly those who presently use open-end leases. Under this type of agreement, the parties agree that the article leased, usually an automobile, will at the end of the lease period have a pre-determined, specified depreciated value and will be sold. If the sale brings less than the depreciated value, the lessee is liable for the difference. It has been observed in respect of this type of lease that:

> The over-all effect of an open-end lease is to place on the lessee the incidents of ownership and give to the lessor rights of a financier. One of the recognized incidents of ownership is gain or loss resulting from appreciation or depreciation in the value of property which is the subject matter of the transaction. Under an open-end lease, it is the lessee, not the lessor, who is in this respect the owner of the chattels.[28]

For this reason, the Commission proposes that open-end leases should be expressly included within the definition of a sale.

3. True Leases

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[28] R.C.C. Cuming, "True Leases and Security Leases Under Canadian Personal Property Security Acts" (1982-83), 7 Can. Bus. L.J. 251, at 278.

The expanded definition of "sale" does not include leases under which the lessee is required to pay by way of rental or damage for breach of contract a sum less than retail market value of the chattels involved. However, the mere fact that leases of this kind are not viewed as consumer credit sales transactions does not mean that they are not being used by credit grantors or that there are no problems associated with them. They are excluded from the expanded definition only because they are in commercial reality true leases, not disguised credit sales transactions. The Commission has concluded that certain types of true leases should be subject to many of the same types of regulatory measures as are applied to consumer credit transactions generally. However, for practical reasons, the Commission has concluded that short-term leases should be exempted from regulation. This exemption is not based on conclusions as to the adequacy of the existing law as it affects the rights of lessors and lessees under short-term leases. Rather, it is based on the realization that a regulatory scheme designed to deal with the problems arising in the context of the consumer credit market is likely to be inadequate or inappropriate when applied to short-term leases.

One of the areas of concern which arises out of existing law as it affects leases is the extent of the lessee's liability in the event of default. The state of existing law is not at all clear. It has been held by Saskatchewan courts that repossession of leased property terminates the lessor's right to recover any rental payments for the balance of the term. Courts have generally taken a hostile view toward liquidated damages clauses which do not reflect the actual loss suffered by the lessor.[29] What remains unclear is the test for

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[29] Canadian Acceptance Corp. Ltd. v Regent Park Butcher Shop Ltd. (1969), 3 D.L.R. (3rd) 304 (Man. C.A.); Unilease Inc. v York Steel Construction Ltd. (1978), 83 D.L.R. (3rd) 275 (Ont. C.A.); Neonoex International Ltd. v Wassill, [1974] 1 W.W.R. 587 (Sask.

determining the amount of damages to a lessor for breach of a lease contract when the lessee's repudiation or deemed repudiation has induced the lessor to repossess the goods leased. The Commission has concluded that the present unsatisfactory state of the law should not be perpetuated. The extent of a consumer's liability under a lease is an important consideration to both consumers and lessors. The existing uncertainty serves no one.

A consumer who considers entering into a lease with a term greater than three months, but less than the full useful life of the property, obviously has chosen not to purchase the goods or, at least, not to purchase them immediately. The lease may well contain an option clause allowing purchase at some time during the term or at the end of the term. However, there is no obligation to purchase at any time, and the exercise of the option necessarily involved payment of a substantial sum. Under these circumstances, the lessee can reasonably expect that what he is paying for is the use of the property. It follows from this that repossession of the property by the lessor should terminate any liability to make further rental payments. On the other hand, the lessee's repudiation of the contract, whether resulting from failure to make lease payments or otherwise, may produce loss to the lessor since he has calculated the return on his investment on the assumption that the property leased would earn income for the full term of the lease. Even if he can release the goods to someone else, he has lost the profit on the first lease since he could have leased other goods to the second lessee.

The Commission has concluded that the only way to recognize the interests of both lessors and lessees and yet provide some predictability for consumers is to prescribe a formula through which the amount recoverable by a lessor can

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Dist. Ct.).

be determined.

An obvious problem which arises out of the use of a formula of the kind set out below is that it is too complex for consumers to use. For this reason, some jurisdictions have adopted easily applied measures of damage such as "twice the average payment allocable to a monthly period under the lease".[30] The strength in this approach is also its weakness. It is simple, but it is arbitrary and, as such, is likely to be randomly unfair to either lessees or lessors.

The Commission has concluded that fairness is a more important consideration to consumers than simplicity. Few consumers choose from alternative arrangements on the basis that the extent of their liability in the event of default will be smaller under one than under the other. Few consumers contemplate default and the additional costs when they enter into contracts and rarely is it possible to predict such costs.

In general terms, the formula would restrict the damages to the total value of all lease payments and other charges to be made over the course of the lease less the actual payments made, a discount in respect of future payments (since the lessor will be able to invest the money received in damages), and the surplus value that accrues to the lessor by virtue of his regaining possession of the leased goods before the lease term has expired.

The approach set out in the recommendation below follows the approach employed by the Supreme Court of Canada.[31] However, it deviates in one major respect. It does not involve a sale of the chattel as a method of determining

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[30] Iowa Consumer Credit Code, s.537.3401; Kansas Consumer Credit Code, s.16a-3-401.

[31] Keneric Tractor Sales Ltd. v Langille (1987), 43 D.L.R. (4th) 171. See also Robophone Facilities, Ltd. v Blank, [1966] 3 All E.R. 128.

the depreciation factor. The recommendations reflect the Commission's position that resale of consumer goods is not an appropriate method of determining their value.

The Commission has concluded that a lessor should not be allowed to take additional security to enforce payment of lease obligations. There is no evidence that this practice presently exists and there is no commercial need for it. The Commission also recommends that lease agreements should not contain terms respecting default that depend on the opinion of the lessor whether a circumstance or state of affairs exist. As under other consumer transactions, the consumer should have a right to object to a seizure before it is undertaken. However, unlike consumer credit transactions, there should be no right to redeem or reinstate the agreement, as these are foreign to the true lease.

4. Recommendations

(1) Open-end leases should be expressly included within the definition of a "sale". In addition, any other lease that in substance secures payment or performance of an obligation should be considered a sale. The provisions relating to consumer sales would therefore apply to such "leases".

(2) True leases (those that do not fall within the definition of a sale) should be governed by the recommendations that follow. These recommendations should not apply to leases of three months or less.

(3) A lease should not contain terms respecting default that depend on the opinion of the lessor in determining whether a circumstance or state of affairs exists.

(4) Grounds for seizure of leased goods should be restricted to cases where:

(a) the lessee fails to make payment as provided by the lease;
(b) the lessee permanently removes the goods from the province without prior notice to the lessor;
(c) the lessee without consent permanently disposes of his interest;
(d) the lessor's interest is placed in jeopardy; or
(e) the court is of the opinion that acceleration or seizure is commercially reasonable.

(5) On default by the lessee, the lessor may seize the goods and obtain

judgment for the actual loss suffered, but such claim shall not exceed the aggregate of:

(a) the value of all lease payments made or to be made over the course of the lease;
(b) default charges provided in the lease that do not exceed an amount prescribed by regulation;
(c) charges provided in the lease for damage to the goods other than that occasioned by normal use; and
(d) amounts actually paid by the lessor in discharging the lessee's obligation under the lease to insure the goods or to pay tax levied against it;

less the aggregate of:

(e) the value of all payments made or other consideration given to the lessor under the lease;
(f) a discount in respect of each unpaid future payment at such rate as the court thinks appropriate;
(g) an amount equal to the difference between the retail market value of the leased goods at the date of repossession and the estimated retail market value of them at the date of expiry of the lease term; and
(h) an amount equal to any costs for maintenance, licensing or repair which the lessor was required under the lease to pay, but which is excused because of repossession by the lessor.

(6) A lessor who intends to seize the leased goods shall give notice to the lessee of his intention to do so, and shall not seize the goods until ten days after serving the notice. The notice shall also inform the lessee of his right to apply for a hearing. This notice is not necessary where the lessee has voluntarily surrendered the goods.

(7) A lessor may immediately seize the goods without giving notice where the goods have been abandoned or the lessor's interest is placed in jeopardy. In such a case the lessor shall at the time of seizure give notice to the debtor of his right to apply for a hearing.

(8) Upon being notified of an application for a hearing, the lessor shall not take any further step to seize or dispose of the leased goods. The court may determine in a summary manner whether or not the lessor is entitled to seize the leased goods, or may direct an action to be brought or an issue to be tried.

E. Contract Forms, Non-Compliance and Judicial Intervention

1. Contract Forms

One of the major problems associated with consumer protection legislation

is that consumers are generally unaware of their rights. The consumer may look to the contract document to inform himself of his rights. However, many of the forms used are so complex that they are meaningless to the consumer, and in many cases purport to give to the credit grantors rights which they do not have under Saskatchewan law. Even if the consumer can struggle through the complex terminology in the document, he still will have no assurance that the document correctly represents his rights.

The Commission is of the opinion that a major step towards having informed credit consumers is to ensure that the contracts they sign provide accurate information concerning the legal relationship between the credit grantor and the consumer. The security agreement should not contain any terms that are prohibited by law, and should not be in a form that misrepresents the consumer's rights.

2. Effect of Non-Compliance

The system of regulation that has been recommended places a number of obligations upon the secured party who intends to realize upon his security. It is necessary in such a system to determine the consequence of a failure by a secured party to comply with these obligations.

There are a number of possible responses. The approach taken by subsection 64(2) of The Personal Property Security Act is to permit the debtor to bring action and recover any loss or damage which was reasonably foreseeable to result from the non-compliance.[32] Although this system is likely adequate in commercial transactions, the Commission is of the opinion that it places to heavy an onus on a consumer to know of and defend his rights.

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[32] See Canada Permanent Trust Co. v Thomas (1983), 28 Sask. R. 17 (Q.B.); Canstor Trucking Ltd. v Bank of Nova Scotia (1986), 48 Sask. R. 136 (Q.B.).

A second approach may be found in section 27 of The Limitation of Civil Rights Act. A failure to strictly comply with the provisions of that Act will result in the termination of the agreement. The debtor is released from all further obligation to pay, and in addition is entitled to recover all monies paid under the agreement without having to account for the benefit conferred by the use of the goods. This type of provision is in substance a legislatively sanctioned penalty clause. Although the serious consequences of non-compliance may ensure that the obligations are fulfilled, it will operate harshly where the failure to comply was trivial or non-prejudicial.

The Commission is of the view that a middle ground should be found. It recommends that the debtor should be able to recover the actual loss or damage suffered, which should be presumed to be at least $100 (to encourage compliance even where smaller sums are involved). Where the secured party's non-compliance causes substantial prejudice, or where it was a deliberate breach, the court should have a greater discretion, such as declaring that all or part of the security agreement is unenforceable,[33] or making some other order that the court considers just. Finally, the court should also have the power to excuse a party from his failure to comply where it was an innocent and isolated incident that did not cause substantial prejudice to another.

3. Supervisory Power of the Court

The simplest consumer credit transaction involves a complex relationship between the parties. An attempt to cover all contingencies and to eliminate every potential abuse will likely prove to be counter-productive. One method

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[33] A roughly similar approach has been given judicial support in Ontario: see National Bank of Canada v Lasalle Excavating of Sudbury Ltd. (1986), 5 P.P.S.A.C. 279 (Ont. Dist. Ct.); Bank of Nova Scotia v McIvor (1986), 57 O.R. (2d) 501 (Dist. Ct.).

widely used in modern consumer protection legislation that does not require a complex regulatory scheme is a system under which the courts are given a general power to prevent unconscionable dealings or the improper exercise of the credit grantor's remedies. All Canadian provinces have enacted unconscionable relief legislation under which a court is empowered to alter the terms of certain types of credit transactions which are harsh or unconscionable. The Saskatchewan Unconscionable Transaction Relief Act[34] has been in force since 1967.

While it is true that the existing unconscionable transactions relief legislation has not been a major source of relief for aggrieved consumers, there is no reason to conclude that the concept of discretionary judicial control has no value as a supplementary measure. The primary reason for the ineffectiveness of the Saskatchewan Act is that consumer credit transactions rarely come before a court. Secured credit grantors can, for the most part, pursue their rights without having to seek a court order. When a money judgment is sought by a credit grantor, it is most often obtained by default procedures. In order for a court to have jurisdiction to intervene, a special application by an aggrieved consumer is necessary. Rarely does this occur.

The Commission has concluded that the judicial power to scrutinize the transaction and the steps taken to enforce it is likely to have a greater significance in the context of the legislative scheme recommended in this report. The proposed scheme will permit a quick, informal determination of the parties' rights. The opportunity to exercise this judicial power will therefore be greatly enhanced.

The Commission also recommends the adoption of a duty of good faith on the part of the parties. The nature of this duty and its relationship with the

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[34] R.R.S. 1978, c.U-1.

doctrine of unconscionability is commented upon by the Ontario Law Reform Commission:[35]

> The doctrine of good faith is a logical complement to the doctrine of unconscionability. The distinction between the two may be stated in this way: the doctrine of unconscionability is concerned with fairness in the terms of a bargain; the doctrine of good faith, on the other hand, focuses on decent behaviour in the exercise of rights or duties imposed under the terms of the agreement or by the governing Act.

This distinction is particularly useful in the consumer credit context. Unconscionability will govern the fairness of the bargain at the time it was entered into; the duty of good faith will govern the conduct of the parties following the execution of the security agreement. Finally, the Commission recommends that a general supervisory power be conferred upon the court, similar in scope to that which is conferred by section 63 of The Personal Property Security Act.

4. Recommendations

(1) No security agreement or lease should contain provisions that misrepresent the rights or obligations of any party to the transaction.

(2) Where a party fails to discharge any duty or obligation imposed upon him, the court should order that he pay damages which shall be deemed to be not less than $100. Where, however, the failure causes substantial prejudice to another person, or is a result of an intentional breach of the duty of good faith dealing, the court should be empowered to order that all or part of the agreement is unenforceable or make whatever order it considers just. The court should have the discretion to excuse the failure where it is an isolated incident and of a non-prejudicial nature.

(3) The court should be empowered to set aside all or part of an agreement which was unconscionable at the time it was entered into.

(4) All rights, duties and obligations under an agreement should be exercised or discharged in good faith and in a fair and commercially reasonable manner.

(5) Upon application of any interested party the court should be

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[35] Report on Sale of Goods (1979), Vol. 1, at 163.

empowered to:

(a) make any order, including binding declarations of right and injunctive relief, that is necessary to ensure compliance with this Act;

(b) give directions to any party regarding the exercise of his rights and remedies under this Act;

(c) stay enforcement of rights provided by this Act or in the agreement;

(d) extend or abridge the time for compliance with the provisions of this Act;

(e) make any order necessary to ensure protection of the interests of any person in the collateral, including orders restricting or prohibiting use of the property or giving directions as to its custody;

on such terms and conditions as the court considers just.

III. PAWNBROKERS

A. The Nature of a Contract of Pawn

The pawn, an ancient form of consumer credit transaction, continues to be used in Saskatchewan. A contract of pawn is a form of bailment or pledge under which a person (the pledgor) delivers one or more items of tangible personal property to a pawnbroker as security for the advance of a sum of money made by the pawnbroker to the pledgor. A pawn is not in law a mortgage since the pawnbroker does not get legal or equitable title in the item pledged. The pawnbroker obtains a special interest in the item which is extinguished when the debt is paid by the pledgor. Under the common law, the period for redemption of the pledge is a matter of agreement between the pawnbroker and the pledgor. If the pledgor does not redeem the pledge by paying the debt, the pawnbroker has an implied power of sale which, when exercised, extinguishes the pledgor's right to redeem his property. A pawnbroker cannot foreclose the pledgor's interest by treating the item pledged as his own. At common law, the pledgor can redeem the pledge at any time prior to sale of the item pledged. If a sale of the item does not realize the amount of the debt owing by the pledgor, the pawnbroker can sue for the deficiency. As an alternative to sale, the pawnbroker has a right of action against the pledgor for the entire debt. If the sale proceeds exceed the amount owing by the pledgor, the surplus must be paid over to the pledgor.

B. The Need for Legislative Regulation

There are no available statistics to indicate the volume of consumer credit which is granted in Saskatchewan under pawn transactions. There can be little doubt, however, that it is insignificant compared to the volume of consumer credit marketed under non-possessory secured credit transactions.

Credit obtained through pawn arrangements is used primarily by consumers who are the most vulnerable because of pressing need or the inability to obtain credit from other legitimate sources. Consumer credit laws should be designed to protect those least able to protect themselves in the market place. The fact that the relative amount of consumer credit which these people obtain is small does not remove the need for legislative intervention.

Two provinces, British Columbia and Ontario, have enacted pawnbroker legislation designed to provide regulation of the business practices of pawnbrokers and certain aspects of pawn contracts.[36] Saskatchewan, like a number of other provinces, permits municipal governments to license and regulate pawnbrokers. However, for all practical purposes, pawn contracts in Saskatchewan are governed by the common law. The Commission has concluded that pawnbroking as a method of advancing consumer credit in Saskatchewan should be regulated through legislation under which licensing and bonding requirements are established.

C. Pawnbrokers Records

The recording of details pertaining to a pawn transaction is essential to the protection of both pawnbrokers and pledgers. The pawnbroker should be required to enter in a book when the pawn was taken, detailed information concerning the pledgor, a description of the article pledged and the sum lent on the pledge. So that pawn transactions can be identified by the name of the pledgor and by the pawn ticket, the pawnbroker should be required to keep an alphabetical list of the pledgors. The articles pawned as well as the pawn tickets should be identified by a number which corresponds with the entry of the

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[36] Pawnbrokers Act, R.S.B.C. 1979, c.314; Pawnbrokers Act, R.S.O. 1980, c.372.

transaction in the pawnbroker's book. By keeping records in this detail, both the pledgor and pawnbroker can be assured that the correct article is returned to the proper owner upon payment of the amount originally loaned plus appropriate interest and charges.

D. Pawn Tickets

Canadian pawnbrokers legislation contains provisions governing pawn tickets, the rights of a holder of a pawn ticket to redeem the goods pledged, and the loss of pawn tickets. Under these provisions, a pawn ticket is given the status of a semi-negotiable document of title to the goods pledged since the holder for the time being of a pawn ticket is presumed to be the person entitled to redeem the pledge.[37]

The requirement that a pawnbroker issue a pawn ticket to a pledgor is important since it gives to the pledgor a simple record of the transaction. It can be important to a pawnbroker as a method of identifying the person entitled to redeem pledged property. However, there appears to be little justification for giving to pawn tickets the status of a semi-negotiable document of title. Where the law permits the pawnbroker to surrender goods pledged to the holder of a pawn receipt other than the pledgor, the effectiveness of legislative provisions designed to protect pledgors can easily be circumvented. It is well recognized that the amount loaned to a pledgor by a pawnbroker is often small relative to the value of the goods pledged. As a result, the pledgor is likely to have a significant interest in redeeming his property or being paid the surplus proceeds from a sale by the pawnbroker. There is little social value in prescribing legislative measures designed to protect the pledgor's interest

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[37] Pawnbrokers Act, R.S.B.C. 1979, c.314, s.21; Pawnbrokers Act, R.S.O. 1980, c.372, s.17.

in the pledged property or its proceeds and at the same time facilitating the circumvention of those measures through the transferability of pawn tickets. If the pledgor's interest in pledged goods is effectively transferred by a mere transfer of a pawn ticket, pledgors become very vulnerable and may suffer loss at the hands of those who appreciate the fact that the cost of redemption of the pledged property is much smaller than its value. Accordingly, the Commission recommends that a pledgor's rights under a pawn transaction should not be transferable merely by delivery of a pawn ticket.

E. Foreclosure Rights of Pawnbrokers

A pawn transaction differs from other types of consumer credit transactions in a number of significant ways. These differences make it impossible to apply to pawn transaction without modification the legal structures which are recommended elsewhere in this report for other types of consumer credit granting arrangements.

Essentially, a pawn transaction is a secured loan agreement under which the lender is placed in possession of the collateral. Other than that a pledge is involved, what distinguishes many pawn transactions from other types of loan transactions is that often the amount advanced is small and repayment by the debtor in redemption of the pledge is not assured. In other words, the pawnbroker is more likely to have to rely on his security than is a regular lender. This is taken into account by him when he determines the amount of money he is willing to advance against the security of the item offered by the potential borrower.

In cases where the amount loaned is small and the value of the property pledged is low it is commercially unrealistic to apply regulatory measures designed to protect debtors where the amount of the loan is large and the value

of the security is significant. The Commission has concluded that in cases where a pawn transaction involves a small amount of money, the period for redemption should not be long and the pledgor's interest should be automatically foreclosed if the borrower does not redeem during the period prescribed for redemption.

It should not, however, be assumed that all pawn transactions involve the granting of small amount of credit or that the pledged property is always of little commercial value. Pawnbrokers in Saskatchewan will take in pledge items such as high-priced musical or entertainment equipment, jewelry and even automobiles. Because of the traditional low ratio of money loaned to value of property pledged prevalent in pawnbroking, statutory measures are required to ensure that a pledgor's equity in high-value items pledged is protected. Different rules should be applied in such cases.

Since the primary reason for legislative intervention is to protect the pledgor's interest in the property pledged, the distinction between situations in which foreclosure absolute is permitted and those in which a realization sale can be required, should be based on the value of the collateral pledged, not on the amount of money loaned. However, there is no practical way in which to measure the value of goods offered by a prospective pledgor. In many cases, the actual market value of goods pledges can be determined only when they are sold in the market. Accordingly, the Commission has been forced to use the dollar amount of the loan advanced as the factor determining what obligations are placed on the pawnbroker to ensure that the pledgor's interests are protected.

The Commission recommends that a distinction be drawn between pawns securing an amount of $100 or less, and those securing over $100. Where the sum secured is $100 or less, the redemption period should be three months or such

longer period as the parties agree upon. Upon the expiration of that period the pledgor's interest should be foreclosed unless the pledgor applies to court for an extension of this period.

Where the amount secured exceeds $100, the redemption period should be six months, or such longer period as the parties agree upon. Where the pledge is not redeemed, the pawnbroker should be permitted to elect whether to retain the article or waive the pledge and enforce his right as an unsecured creditor. If the pawnbroker elects to retain the article, the pledgor and any others with an interest in the pledged goods should be given notice and additional time to redeem the pledge. If no one objects to retention of the article or redeems it, the pawnbroker should be entitled to retain it free of any other interest. However, if the pledgor or other person objects to retention of the article by the pawnbroker, the pawnbroker should be required to sell the article and turn the surplus over to the pledgor. A pawnbroker who elects to waive the pledge and causes the article pawned to be sold under execution, should be entitled to recover no more than the amount realized from the sale of the article. This system is similar to the election of remedies system proposed elsewhere for purchase-money security interests. But because the pawnbroker, like the secured seller, can ensure that the value of his security is commensurate with the value of the debt outstanding, the method for determining the existence of a surplus differs from that recommended for other types of secured consumer credit transaction because a pawnbroker is also a retail seller of goods, and therefore has the facilities through which to dispose of his collateral in an efficient manner.

The Commission has concluded that there is no need to place limits on the type of property taken as security in pledge by pawnbrokers. A pledgor who has

surrendered his property in pledge is not subject to the threat of deprivation through seizure after default. In any event, the type of property taken as security by pawnbrokers does not generally fall into the categories of necessaries described elsewhere in this report.

Finally, the Commission recommends that the pledgor be permitted to recover any loss arising out of damage of the article pawned while in the pawnbroker's possession.

F. Recommendations

(1) Legislation should provide for the licensing and bonding of pawnbrokers.

(2) A pawnbroker should be required to record details of the pledgor, a description of the article pledged and the sum lent. An alphabetical list of pledgors should also be maintained, and the article pawned as well as the pawn ticket should be identified by a number corresponding to the entry of the transaction of the pawnbroker's book.

(3) The rights of a pledgor should not be transferable by delivery of a pawn ticket or other document. A pawnbroker should not be required to deliver a pawned article until the pawn ticket is produced.

(4) Where the sum lent against a pledge is $100 or less, the pledge may be redeemed within three months, or whatever longer period agreed upon by the parties. If a pledge is not redeemed within this period, then the pledgor's rights are extinguished and ownership vests in the pawnbroker. A court may extend the period for redemption.

(5) Where the sum lent against a pledge exceeds $100, the pledge should be redeemable within six months or whatever longer period agreed upon by the parties. If a pledge is not redeemed within this period the pawnbroker must elect between retaining the article in satisfaction of the debt, or waiving the pledge and enforcing his rights as an unsecured creditor. If he elects to retain the collateral, he should give notice to the pledgor. If the pledgor thinks that the value of the pawn exceeds the sum lent, he should be able to force a sale by the pawnbroker, or failing this, he should be entitled to obtain a valuation by a court. Any surplus should be turned over to the pledgor.

IV. THE PROPOSED LEGISLATION

(Should there be any variation between the text and the Proposed Legislation, the text governs)

An Act respecting Consumer Credit

SHORT TITLE AND INTERPRETATION

Short Title

1. This Act may be cited as The Consumer Credit Act.

Interpretation

2. In this Act:

(a) "consolidation agreement" means an agreement under which the obligations under two or more secured credit sales agreements are consolidated;

(b) "consumer credit agreement" means an agreement under which credit is granted to an individual for personal, family or household purposes by a person regularly engaged in the business of granting credit;

(c) "court" means the Provincial Court of Saskatchewan;

(d) "credit" means a right granted by a creditor to a debtor to defer payment of debt, to incur debt and defer its payment, or to purchase property and defer payment of it;

(e) "debtor" includes a buyer and a lessee;

(f) "purchase money security interest" means:

(i) a security interest that is taken or reserved by a seller of collateral to secure all or part of its sale price;

(ii) a security interest that is taken by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, to the extent that value is applied to acquire those rights;

(g) "retail market value" means the amount recoverable in a retail disposition of goods of the same kind in good condition at the urban centre nearest the consumer's place of residence, unless the lessor establishes that some other value is appropriate;

(h) "sale" means:

(i) a contract for the sale of goods, services, or both goods and services, in which credit is granted by the seller; or

(ii) a lease or other transaction by a person regularly engaged in the business of leasing goods or granting credit under which the lessee is obligated:

(A) to make total rental payments substantially equal to or in excess of the retail market value of the goods at the date of the agreement; or

(B) to pay a sum which when added to the aggregate value of rental payments paid or payable at any time during the lease together with the resale value or lease value at that time is substantially equal to or in excess of the retail market value of the goods at the date of the agreement;

and includes any arrangement for refinancing the obligation of the buyer or lessee and any transaction in the form of a lease which is a security agreement within the meaning of The Personal Property Security Act;

(i) "secured party" means a person who has a security interest;

(j) "security agreement" means an agreement that creates or provides for a security interest;

(k) "security interest" means an interest in property that secures payment or performance of an obligation;

(l) "seller" includes any person who acquires the rights of a seller or lessor by assignment;

(m) "variable credit agreement" means an agreement under which a person is permitted to make purchases from time to time and to have the obligations arising out of such purchases treated as a single obligation upon which credit charges and repayment instalments are calculated;

(n) "voluntary surrender" does not include a surrender

made pursuant to:

(a) a request or demand by a secured creditor or lessor;

(b) a statement by the secured creditor or lessor that he intends to take possession of the goods;

unless the secured party or lessor has merely informed the debtor of his right to surrender the goods and the consequences of doing so;

(o) "wholesale market value" means the amount that could be recovered in a wholesale disposition of goods of the same kind in good condition, at the urban centre nearest the debtor's place of residence, unless the secured party establishes that some other value is appropriate.

Application

3.-(1) This Act applies to every consumer credit agreement that creates a security interest, other than a transaction to which The Pawnbrokers Act applies.

(2) Part V of The Personal Property Security Act does not apply to a consumer credit agreement.

RESTRICTION ON PROPERTY IN WHICH SECURITY INTERESTS MAY BE TAKEN

Restriction on property that may be taken as security or seized

4.-(1) No secured party shall take a security interest in food, necessary and ordinary clothing of the debtor and his family, bedding, a bed, heating apparatus, cooking utensils, heating or cooking fuel and health aids necessary to sustain health.

(2) A security interest is unenforceable against collateral the total value of which does not at the date of default exceed $300 in wholesale market value.

(3) No secured party shall take a non-purchase money security interest in personal property the total value of which does not at the date of the agreement exceed $300 in wholesale market value.

(4) No secured party shall take a non-purchase money security interest in:

(a) a stove or oven;
(b) kitchen furniture;
(c) a refrigerator or freezer, or a unit that is a

combination of a refrigerator and a freezer;

(d) a washing machine;

(e) a clothes dryer.

(5) A non-purchase money security interest in a motor vehicle is unenforceable where the motor vehicle is necessary for the efficient conduct of the debtor's business, trade, calling or profession or farming operations or for the debtor to obtain employment.

Restriction against additional collateral where purchase money security interest taken

5.-(1) A seller who takes a purchase money security interest in the goods sold shall not take a security interest in any other property to secure any part of the buyer's obligation under the sale.

(2) Subsection (1) does not apply to the sale of land with chattels upon an entire consideration.

(3) A seller who takes a security interest in:

(a) goods upon which services are performed; or

(b) land in respect of which services are rendered;

shall not take a security interest in any other property to secure any part of the buyer's obligation under the sale.

Restriction on property that may be taken as security

6.-(1) Subject to subsection (2), no secured party shall take a security interest in personal property that:

(a) is not identified in the written security agreement by an itemized description; or

(b) is acquired by the debtor after the agreement is executed.

(2) Subject to sections 4 and 5, a secured party may take a security interest in collateral described in subsection (1) if it is:

(a) a purchase money security interest; or

(b) a security interest in collateral obtained by the debtor as replacement for items described in the security agreement.

Consolidation agreements

7.-(1) A consolidation agreement is unenforceable against the debtor unless the debtor, prior to the execution of the agreement, is given written notice in clear terms:

(a) stating that the debtor is under no obligation to enter into the consolidation agreement;

(b) indicating the extent to which the rights and obligations of the debtor are changed or affected; and

(c) indicating the method by which payments are allocated and under what circumstances a security interest is discharged.

(2) Where a consolidation agreement creates a single schedule of payments:

(a) payments received by the seller are deemed to be applied in the order that the original obligations were incurred; and

(b) upon payment in full of an earlier obligation under clause (a), the security interest in property to which that obligation relates is discharged.

Variable credit agreements

8.-(1) Where a debtor has entered into a variable credit agreement with a seller:

(a) payments received by the seller are deemed to be applied first to the payment of credit charges in the order of entry to the account, and then to the payment of the items purchased in the order of entry to the account;

(b) upon payment in full of an entry, the security interest in property to which that entry relates is discharged.

(2) Where two or more purchases are made on the same day under a variable credit agreement, payments are deemed to be applied first to the payment of the smaller obligation.

(3) Every variable credit agreement shall set out in clear terms the method of payment allocation and the circumstances under which a security interest is discharged.

Disclosure

9. A seller who enters into a consolidation agreement

under consolidtation agreement or variable credit agreement

which creates a single schedule of payments, or who enters into a variable credit agreement shall provide the debtor, at least once every six months and at the time of seizure of any items purchased under the agreement, a written statement in clear terms:

(a) indicating the amount owing on the items purchased under the agreement that are subject to a security interest; and

(b) stating that the security interest in all other items under the agreement is discharged and that the items are not subject to repossession by the seller.

Certain security interests in land prohibited

10. No secured party shall take a non-purchase money security interest in real property or a trailer used as living quarters unless the amount secured exceeds $5,000.

RIGHTS AND REMEDIES ON DEFAULT

Default shall not depend on opinion of secured party

11. A security agreement shall not contain terms respecting default that depend on the opinion of the secured party in determining whether a circumstance or state of things exist.

Acceleration of obligation restricted

12.-(1) A security agreement shall not contain terms under which payment or performance of the debtor's obligation is accelerated or which give the secured party a right to seize collateral, other than terms which provide for acceleration or seizure where:

(a) the debtor fails to make payment as provided by the agreement;

(b) the debtor permanently removes the collateral from the province without prior notice to the secured party;

(c) the debtor disposes of his entire interest in the collateral without the consent of the secured party; or

(d) the secured party has commercially reasonable grounds to believe that the collateral is or is

about to be placed in jeopardy.

Election of remedies where purchase money security interest taken

13.-(1) On default by a debtor in the performance of an obligation secured in whole or in part by a purchase money security interest, the secured party may:

(a) proceed to realize on his security interest; or

(b) waive his security interest and enforce his right as an unsecured creditor.

(2) A secured party is deemed to have elected to realize on his security interest if he:

(a) takes possession or authorizes seizure of the collateral; or

(b) accepts surrender of the collateral by the debtor.

(3) Where a secured party elects to realize on his security interest, the debtor is released from all outstanding obligations secured by the collateral.

(4) A secured party is deemed to have elected to waive his security interest if he initiates judicial proceedings to obtain a money judgment against the debtor in respect of the agreement.

(5) Where a secured party elects to waive his security interest, he shall immediately take such steps as are necessary to discharge any registration of his security interest, and upon such an election the debtor holds and may dispose of the collateral secured under the agreement free and clear of all rights or interests of the secured party.

(6) A secured party who elects to waive his security interest and who:

(a) causes the collateral secured under the agreement to be seized and sold under execution or other judgment enforcement measure; or

(b) who obtains any portion of the proceeds of a levy against such collateral;

shall recover no more than the amount realized from the sale of such collateral, and shall return any surplus to the debtor.

(7) Subsection 5(1) of The Exemptions Act does not apply to

a seller who has waived his security interest.

(8) Where it is shown to the court that:

(a) the debtor has wilfully damaged the collateral or that it has been seriously damaged through his neglect;

(b) the debtor has removed portions of the collateral and has not replaced them with items of equivalent value;

(c) the debtor has hidden the collateral and has refused to disclose its whereabouts;

(d) the debtor has disposed of the collateral in violation of the security agreement; or

(e) it would be inequitable for any other reason to require the secured party to elect his remedy;

the court may make such order as it thinks just and expedient that will place the secured party in the position he would have occupied had the circumstances referred to in clauses (a) to (e) not occurred.

Remedies cumulative where non-purchase money security interest taken

14. On default by a debtor in the performance of an obligation that is not secured in whole or in part by a purchase money security interest, the secured party may realize on his security interest and, subject to section 19, may also recover any deficiency between the wholesale market value of the collateral and the balance owing by the debtor.

Right to notice

15.-(1) A secured party who intends to seize collateral in the possession of the debtor shall serve the debtor with notice in form A of his right to object to seizure of the collateral and shall not seize the collateral until 10 days after service of the notice.

(2) Acceptance by the secured party of a payment on account of any amount under an agreement after a notice in form A is served cancels the notice.

(3) Where a debtor voluntarily surrenders the collateral, the secured party shall forthwith serve him with notice in form B and indicate the place where the collateral is kept.

(4) If a debtor is in default and the secured party has reasonable grounds to believe that:

(a) the collateral has been abandoned by the debtor; or

(b) the secured party's interest is placed in jeopardy;

(c) the collateral is perishable; or

(d) the collateral will decline substantially in value if not disposed of immediately after default;

the secured party may immediately seize the collateral and shall serve the debtor with notice in form C.

(5) Subject to subsection (6), a secured party who has seized collateral or to whom collateral has been voluntarily surrendered shall not dispose of or otherwise deal with it until 32 days after service of notice in form A, B or C.

(6) A secured party may sell or otherwise deal with the collateral immediately after seizing it if:

(a) the collateral is perishable;

(b) the collateral will decline substantially in value if not disposed of immediately after default;

(c) the cost of care and storage of the collateral is disproportionately large relative to its value;

(d) a debtor voluntarily surrenders in writing his right to reinstate the security agreement; or

(e) for any other reason, a judge on an ex parte application, is satisfied that delay in disposition is unwarranted.

Right to hearing

16.-(1) A debtor may apply for a hearing by delivering Part II of the notice in form A or form C, completed and signed by him, to the clerk of the Provincial Court at the judicial centre nearest to his place of residence.

(2) On receipt of a notice signed by the debtor, the clerk shall:

(a) immediately serve notice on the secured party advising him that an application for a hearing has been made by the debtor;

(b) as soon as practicable fix a time and place for the hearing; and

(c) serve notice of the hearing and the time and place fixed therefor on the debtor and on the secured party at least 10 days prior to the day fixed for the hearing.

(3) Upon being notified that an application for a hearing has been made, the secured party shall, subject to subsection 15(4), take no further step to seize or dispose of the collateral.

(4) A court, on application under this section, may determine in a summary manner whether or not the secured party is entitled to seize the collateral, or may direct an action to be brought or an issue to be tried.

(5) A security agreement shall not provide for the payment of a fee by a debtor who exercises the right to apply for a hearing.

(6) No costs shall be awarded against the debtor unless the debtor's claim is frivolous and an abuse of his right to make the application.

Right to redeem or reinstate

17.-(1) Every consumer credit agreement shall inform the debtor of his right to reinstate the security agreement or to redeem the collateral.

(2) The debtor may reinstate the security agreement:

(a) within 32 days after obtaining the notice in form A, B or C, if the debtor did not apply for a hearing;

(b) within such time as ordered by a court if the debtor applied for a hearing;

by paying the sum actually in arrears, exclusive of the operation of any acceleration clause, or curing any other default.

(3) Unless otherwise agreed, a debtor is not entitled to reinstate:

(a) more than twice, if the security agreement provides for payment in full by the debtor within twelve months after the day value was given by the secured party; or

(b) more than twice in each year, if the security agreement provides for payment by the debtor during a period of time in excess of one year after the day value was given by the secured party.

(4) A debtor or any other person who has an interest in the collateral may, at any time after execution of a consumer credit agreement and before the debtor's interest in the collateral is extinguished, redeem the collateral by tendering to the secured party payment of all amounts secured by the security interest.

(5) A security agreement may provide for the payment of a fee for exercise of the right to reinstate the agreement or to redeem the collateral, but such fee shall not exceed the amount prescribed by regulation.

(6) Where a debtor reinstates the security agreement or redeems the collateral, the secured party shall return the collateral to the debtor and compensate him for any damage to the collateral while in the secured party's possession.

Extinguishment of debtor's rights in collateral

18. The interest of the debtor in the collateral is extinguished and the secured party is entitled to retain the collateral free of such interest:

(a) after the expiration of 32 days from the date notice in form A or C was given to the debtor, if the debtor did not apply for a hearing and no application for a valuation order has been made;

(b) within such time as ordered by a court if the debtor applied for a hearing and it is determined that the secured party was entitled to seize the collateral, and if no application for a valuation order has been made; or

(c) upon a valuation order being made under section 19 and upon compliance with an order for payment of any surplus under subsection 19(5).

Valuation of collateral

19.-(1) Where collateral is seized or surrendered the secured party shall before or immediately after seizure or surrender, if 60 percent or more of the total amount owing under the agreement has been paid at the date of repossession, serve notice in form D on the debtor and to any other person who is known by the secured party to have an interest in the collateral of his right to a valuation of the collateral.

(2) In determining the amount owing under an agreement, the value as set out in the security agreement of a trade-in or other property transferred shall be included in the amount paid by the debtor to the secured party.

(3) A secured party who has seized or accepted the surrender of collateral shall apply to court for a valuation of the collateral if:

(a) the person mentioned in subsection (1) makes a demand for a hearing to the secured party 15 days after receiving notice in form D;

(b) the secured party has reason to believe that the wholesale market value of the collateral seized or surrendered is greater than the amount secured by the collateral seized;

(c) the secured party receives a written demand within 15 days of the seizure from any other person who has an interest in the collateral; or

(d) the secured party has dealt with the collateral under subsection 15(6).

(4) An application for a valuation of collateral may be made by the debtor or other party who has an interest in the collateral within the time in which the debtor may reinstate the security agreement; and the secured party shall not dispose of or otherwise deal with the collateral until the expiration of that period, and if an application has been made, until it is determined by the court.

(5) The court shall determine the wholesale market value of the collateral, and if it determines that the wholesale market value of the collateral exceeds the amount owing to the secured party by the debtor under the security agreement, it shall direct that the surplus be paid over as provided in section 60 of The Personal Property Security Act or as the court directs.

(6) In determining the wholesale market value of collateral, the court may take into consideration evidence formally presented to the court, published information as to the value of property of the same or similar kind and condition as the collateral, and any other relevant information, whether or not presented as formal evidence before the court, that the court considers relevant.

(7) Subject to subsection (8), a secured party need not obtain a valuation order if:

(a) after receiving complete information from the secured party as to the wholesale market value of goods of similar kind and condition, the debtor agrees in writing to the valuation or executes a

written surrender of the collateral; and

(b) no other interested party has made a written demand for a valuation.

(8) A secured party who intends to make a claim for the deficiency shall apply to court for a valuation of the collateral before disposing of or altering the collateral, or in the case of a seizure under subsection 15(6) shall apply for a valuation of the collateral after such disposal, unless the debtor after having received complete information from the secured party as to the wholesale market value of goods of similar kind and condition:

(a) agrees in writing to the value of the collateral; and

(b) signifies in writing his understanding that he is required to pay the deficiency to the secured creditor.

(9) Where a secured party is entitled under section 14 to realize on his security interest and to also recover any deficiency, he may elect instead to retain the collateral in satisfaction of the obligation secured in accordance with section 61 of The Personal Property Security Act.

(10) No costs shall be awarded in an application for a valuation order unless:

(a) the application is frivolous and an abuse of the debtor's right to make the application;

(b) the application was made necessary by the failure of the secured party to make a required application or serve a notice;

(c) the application results from a demand of a person other than the debtor.

Fixtures and accessions

20.-(1) A secured party who intends to remove collateral that has become affixed to the debtor's land or that has become an accession to the debtor's goods shall serve notice on the debtor of his right to apply to court for an order prohibiting removal on the ground that removal would cause substantial damage to other property of the debtor, and shall not remove the goods until 15 days after such notice is given.

(2) On application by a debtor, the court shall consider the extent to which the removal of the collateral would

damage other property of the debtor and may make an order prohibiting or restricting removal of the goods on such terms and conditions as it thinks fair.

Seizure not to involve breach of peace

21.-(1) On default of a debtor under a security agreement, the secured party shall take possession of the collateral only if possession can be taken without unauthorized entry into a dwelling, use of force, or other breach of the peace.

(2) A security agreement shall not contain a term giving the secured party a right to enter a dwelling or to cause damage to property.

(3) On application by a secured party entitled to seize collateral, a court may make a seizure order instructing the sheriff or his bailiff to seize the collateral.

Court may prohibit seizure

22. Where a secured party has taken a non-purchase money security interest the debtor may apply to a court for an order prohibiting the seizure or for the return of some or all of the collateral on the ground that because of its nature, age or condition it is unlikely to be of sufficient market value to justify its seizure and the court may make an order on such terms and conditions as it considers just.

CONSUMER LEASES

23. Sections 24 to 29 apply to a lease for a term exceeding 3 months of goods to an individual for personal, family or household purposes by a person regularly engaged in the business of leasing or granting credit.

Lessor shall not take security interest in lessee's property

24. A lessor shall not take a security interest in any property of the lessee to secure obligations arising from a lease, but a lessor may require a cash security deposit to be paid at the beginning of the lease term.

Default shall not depend on opinion of lessor

25. A lease shall not contain terms respecting default that depend on the opinion of the lessor in determining whether a circumstance or state of things exist.

Right of service restricted

26.-(1) A lease shall not contain terms which give the lessor a right to seize the goods, other than terms which provide for seizure where:

(a) the lessee fails to make payment as provided by the lease;

(b) the lessee permanently removes the goods from the province without prior notice to the lessor;

(c) the lessee disposes of or encumbers his interest in the goods without the consent of the lessor;

(d) the lessor's interest is placed in jeopardy; or

(e) the court is of the opinion that seizure is commercially reasonable.

(2) Leased goods are not placed in jeopardy under clause (1)(d) solely because the lessee has temporarily removed them from the jurisdiction.

Rights of lessor on default of lease

27.-(1) On default by the lessee, the lessor may seize the goods and may obtain judgment against the lessee for actual loss suffered by the lessor.

(2) The claim for actual loss suffered by the lessor shall not exceed the aggregate of:

(a) the value of all lease payments made or to be made over the course of the lease;

(b) default charges provided in the lease that do not exceed an amount prescribed by regulation;

(c) charges provided in the lease for damage to the goods other than that occasioned by normal use; and

(d) amounts actually paid by the lessor in discharging the lessee's obligation under the lease to insure the goods or to pay tax levies against it;

less the aggregate of:

(e) the value of all payments made or other consideration given to the lessor under the lease;

(f) a discount in respect of each unpaid future payment at such rate as the court thinks appropriate;

(g) an amount equal to the difference between the retail market value of the leased goods at the date of repossession and the estimated retail market value of them at the date of expiry of the lease term; and

(h) an amount equal to any costs for maintenance, licensing or repair which the lessor was required under the lease to pay, but which is excused because of repossession by the lessor.

(3) Subject to subsection (4), a lessor in claiming for his actual loss shall file with the court material indicating the retail market value of the goods under clause (2)(g).

(4) A lessor need not file material on the retail market value if the lessee after having been given full information on the retail market value of the goods agrees in writing to the valuation and signifies his understanding that he is required to pay damages to the lessor.

Right to notice

28.-(1) A lessor who intends to seize the leased goods shall serve the lessee with notice in form E of his right to object to the seizure, and shall not seize the leased goods until ten days after service of the notice.

(2) If a lessee is in default and the lessor has reasonable grounds to believe that:

(a) the leased goods have been abandoned by the lessee; or

(b) the lessor's interest is placed in jeopardy;

the lessor may seize the property and shall, at the date of seizure, serve the lessee with the notice in form F.

Right to hearing

29.-(1) A lessee may apply for a hearing by delivering Part II of the notice in form E or form F, completed and signed by him, to the the clerk of the Provincial Court nearest

to his place of residence.

(2) On receipt of a notice signed by the lessee, the clerk shall forthwith notify the lessor that an application for a hearing has been made and shall as soon as practicable fix a time and place for the hearing; and upon being notified, the lessor shall take no further step to seize or dispose of the leased goods.

(3) A court, on application under this section, may determine in a summary manner whether or not the lessor is entitled to seize the leased goods, or may direct an action to be brought or an issue to be tried.

(4) No costs shall be awarded against the lessee unless the lessee's claim to retain possession is frivolous and an abuse of the lessee's right to make the application.

Duty of good faith dealing

30. All rights, duties and obligations under an agreement, under this Act or under any other applicable law, shall be exercised or discharged in good faith and in a fair and commercially reasonable manner.

Contract forms

31.-(1) No security agreement or lease shall:

(a) contain provisions which are prohibited by this or any other Act; or

(b) be in a form that misrepresents the rights or obligations of any party to the transaction.

(2) A security agreement or lease contravenes subsection (1) if:

(a) it purports to give to a secured party or lessor rights not recognized by law;

(b) it purports to withdraw or diminish the rights of a debtor or lessee given by law;

(c) its provisions would likely mislead in a material respect a reasonable person who read it;

(d) it is accompanied by any oral or written representation made directly or indirectly by a secured party or lessor which would likely mislead in a material respect a reasonable person to whom it was made.

Non-

32.-(1) Where a party fails to discharge any duty or obligation

compliance with Act

imposed upon him by this Act, the court may order that he pay the greater of $100 or the damages actually suffered as a result of the failure.

(2) Where the failure of a party to discharge any duties or obligations imposed upon him by this Act:

(a) causes substantial prejudice to another person; or

(b) is a result of an intentional breach of the duty of good faith dealing;

the court may order that all or part of the agreement is unenforceable, or grant such other remedy under section 34, as the court considers just.

(3) The court may excuse the failure of a party to discharge any duties or obligations imposed by this Act if it is satisfied that:

(a) the established practices of the party comply with the provisions of this Act;

(b) the failure to comply was an isolated incident resulting from inadvertence; and

(c) the failure did not cause substantial prejudice to another person.

Unconscionable terms

33. Where an agreement or certain terms of an agreement are found to be unconscionable at the time it was made, the court may order that all or part of the agreement is unenforceable, or grant such other remedy under section 34 as the court considers just.

Powers of court

34. Upon application of any interested person, or in any proceeding before a court, the court may:

(a) make any order, including binding declarations of right and injunctive relief, that is necessary to ensure compliance with this Act;

(b) give directions to any party regarding the exercise of his rights and remedies under this Act;

(c) stay enforcement of rights provided by this Act or in the agreement;

(d) extend or abridge the time for compliance with the provisions of this Act;

(e) make any order necessary to ensure protection of the interests of any person in the collateral, including orders restricting or prohibiting use of the property or giving directions as to its custody;

on such terms and conditions as the court considers just.

Limitation

35. The powers conferred on a court under this Part shall not be exercised after two years from the date that the obligations under the agreement have been discharged.

GENERAL

Appeal

36. An appeal lies from an order, judgment or decision of the Provincial Court to the Court of Queen's Bench.

Service

37.-(1) Service of any notice referred to in this Act may be effected:

(a) by personal service;

(b) by sending it by registered mail, postage prepaid, addressed to the person to be served at his last known address.

(2) Service by registered mail is effected when the addressee actually receives a notice or any other written matter, or upon the expiry of four days after the day of registration, whichever is earlier.

Form A

(Clause 15(1))

Part I

Notice of Intention to Seize Collateral
under a Consumer Credit Agreement

To:

Take Notice:

1. That on account of your default under the consumer credit agreement, particulars of which are set out in paragraph 10 ("the agreement"), I intend to seize the following collateral referred to in the agreement:

2. That if you object to seizure of the collateral on the grounds that you are legally entitled to retain it, you may, at any time before your rights in the collateral are extinguished, apply for a hearing by a judge in the manner set forth in paragraph 3.

3. That you may make an application for a hearing by a judge by serving Part II of this notice, completed and signed by you on the clerk of the Provincial Court at the judicial centre that is nearest the place where you reside.

4. That unless you apply for a hearing by a judge within 10 days after service of this notice on you, I may seize the collateral.

5. That no costs shall be awarded against you in respect of an application mentioned in paragraph 3 except where your claim is frivolous and an abuse of your right to make an application.

6. That you may reinstate the agreement by paying the sum actually in arrears, exclusive of the operation of any acceleration clause, or curing any other default.

7. That your right to reinstate must be exercised within 32 days after service of this notice on you, if you do not apply for a hearing, or within such time as ordered by the court if you apply for a hearing and it is decided against you.

8. That you may redeem the collateral before your interest in the collateral is extinguished by paying all amounts secured under the agreement.

9. That your interest in the collateral is extinguished and I am entitled to retain the collateral free and clear of your interest:

(a) 32 days after service of this notice on you, if you did not

apply for a hearing and no application for a valuation order has been made;

(b) within such time as ordered by a court if you applied for a hearing and it is decided against you and no application for a valuation order has been made; or

(c) upon a valuation order being made under section 19 of The Consumer Credit Act.

10. (In this paragraph give particulars of the agreement and the default, including:

(a) the date of execution of the agreement by the debtor;

(b) particulars of default:

(i) failure to make payment (specify the amount due and the date the amount became due); or

(ii) permanent removal of collateral from the province without notice to secured party; or

(iii) disposal of debtor's entire interest in collateral without consent of secured party; or

(iv) secured party's interest placed in jeopardy (give details);

(c) amount required to reinstate agreement;

(d) amount required to redeem collateral.)

Further take notice that my address for service is:

Dated at , in the Province of Saskatchewan, this day of , 19 .

_____
Secured Party

Part II

(Section 16)

Request for Hearing under
a Consumer Credit Agreement

To the Clerk of the Provincial
Court at the Judicial Centre of
_____.

You are hereby requested to fix a time and place for a hearing by a judge with respect to the Notice of Intention to Seize Collateral under a Consumer Credit Agreement set out above.

I reside at _____.

Dated at _____, in the Province of Saskatchewan this _____day of _____, 19__.

_____
Debtor

Form B

(Clause 15(3))

Notice upon Voluntary Surrender
under a Consumer Credit Agreement

To:

Take Notice:

1. That you have voluntarily surrendered to me the collateral referred to in the consumer credit agreement, particulars of which are set out in paragraph 6 ("the agreement").

2. That you may, within 32 days after service of this notice upon you, reinstate the agreement by paying the sum actually in arrears, exclusive of the operation of any acceleration clause, or curing any other default.

3. That you may redeem the collateral before your interest in the collateral is extinguished by paying all amounts secured under the agreement.

4. That your interest in the collateral is extinguished and I am entitled to retain the collateral free and clear of your interest:

(a) 32 days after service of this notice on you, if no application for a valuation order has been made; or

(b) upon a valuation order being made under section 19 of The Consumer Credit Act.

5. That the collateral surrendered to me is located at:
(indicate place where collateral is kept).

6. (In this paragraph give particulars of the agreement and the default including:

(a) the date of execution of the agreement by the debtor;

(b) amount required to reinstate agreement;

(c) amount required to redeem collateral.)

Further take notice that my address for service is:

Dated at , in the Province of Saskatchewan, this day of , 19 .

_____

Secured Party

Form C

(Clause 15(4))

Part I

Notice of Seizure of Collateral
under a Consumer Credit Agreement

To:

Take Notice:

1. That on account of your default under the consumer credit agreement, particulars of which are set out in paragraph 9 ("the agreement"), and because I have reasonable grounds to believe that you have abandoned the collateral referred to in the agreement (or my interest in the collateral is in jeopardy (give details), or the collateral is perishable, or the collateral will decline substantially in value if not disposed of immediately after default, as the case may be), I hereby seize the following collateral referred to in the agreement:

2. That if you object to seizure of the collateral on the grounds that you are legally entitled to retain it, you may, at any time before your rights in the collateral are extinguished, apply for a hearing by a judge in the manner set forth in paragraph 3.

3. That you may make an application for a hearing by a judge by delivering Part II of this notice, completed and signed by you, to the clerk of the Provincial Court at the judicial centre that is nearest the place where you reside.

4. That no costs shall be awarded against you in respect of an application mentioned in paragraph 3 except where your claim is frivolous and an abuse of your right to make an application.

5. That you may reinstate the agreement by paying the sum actually in arrears, exclusive of the operation of any acceleration clause, or curing any other default.

6. That your right to reinstate must be exercised within 32 days after service of this notice on you, if you do not apply for a hearing, or within 22 days after the court's determination if you apply for a hearing and it is decided against you.

7. That you may redeem the collateral before your interest in the collateral is extinguished by paying all amounts secured under the agreement.

8. That your interest in the collateral is extinguished and I am entitled

to retain the collateral free and clear of your interest:

(a) 32 days after service of this notice on you, if you did not apply for a hearing and no application for a valuation order has been made;

(b) within such time as ordered by a court if you applied for a hearing and it is decided against you and no application for a valuation order has been made; or

(c) upon a valuation order being made under section 19 of The Consumer Credit Act.

9. (In this paragraph give particulars of the agreement and the default, including:

(a) the date of execution of the agreement by the debtor;

(b) particulars of default:

(i) failure to make payment (specify the amount due and the date the amount became due); or

(ii) permanent removal of collateral from the province without notice to secured party; or

(iii) disposal of debtor's entire interest in collateral without consent of secured party; or

(iv) secured party's interest placed in jeopardy (give details);

(c) amount required to reinstate agreement;

(d) amount required to redeem collateral.)

Further take notice that my address for service is

Dated at , in the Province of Saskatchewan, this day of , 19 .

_____

Secured Party

Part II

(Section 16)

Request for Hearing upon Seizure
of Collateral under a Consumer Credit Agreement

To the Clerk of the Provincial
Court at the Judicial Centre of
_____.

You are hereby requested to fix a time and place for a hearing by a judge with respect to the Notice of Seizure of Collateral under a Consumer Credit Agreement set out above.

I reside at _____.

Dated at _____, in the Province of Saskatchewan this ___ day of _____, 19__.

_____
Debtor

Form D

(Section 19)

Notice of Debtor's Right to
Valuation of Collateral

To:

Take Notice:

1. That on account of my seizure (or the debtor's surrender, as the case may be) of the collateral referred to in the consumer credit agreement, particulars of which are set out in paragraph 6 ("the agreement"), you may obtain an order of a judge valuing the collateral and determining the surplus payable to you if any, in the manner set out in paragraph 2 or 3.

2. That if you serve on me a notice within 15 days after service of this notice on you, demanding that I apply for a hearing by a judge to value the collateral, I am required by The Consumer Credit Act to so apply.

3. That you may, within the time in which the debtor may reinstate the agreement, apply for a hearing by a judge of the Provincial Court at the judicial centre nearest the place where the debtor resides.

4. That unless an application for a valuation order is made, the interest of the debtor in the collateral will be extinguished and I may retain the collateral free and clear of the debtor's interest.

5. That no costs shall be awarded in respect of an application mentioned in paragraphs 2 and 3 unless:

(a) the application is frivolous and an abuse of the debtor's right to make the application;

(b) the application was made necessary by my failure to make a required application or serve a notice; or

(c) the application results from a demand of a person other than the debtor.

6. (In this paragraph give particulars of the agreement and the default including:

(a) the date of execution of the agreement by the debtor;

(b) the total arrears under the agreement;

(c) the total amount unpaid under the agreement.)

Further take notice that my address for service is:

Dated at , in the Province of Saskatchewan, this day of , 19 .

_____

Secured Party

Form E

(Section 28)

Part I

Notice of Intention to Seize
Goods under a Lease

To:

Take Notice:

1. That on account of your default under the lease, particulars of which are set out in paragraph 6 ("the agreement"), I intend to seize the following goods referred to in the agreement:

2. That if you object to seizure of the goods on the grounds that you are legally entitled to retain them, you may apply for a hearing by a judge in the manner set forth in paragraph 3.

3. That you may make an application for a hearing by a judge by delivering Part II of this notice, completed and signed by you, to the clerk of the Provincial Court at the judicial centre that is nearest the place where you reside.

4. That unless you apply for a hearing by a judge

(a) within 10 days after service of this notice on you, I may seize the goods;

(b) within 32 days after seizure, I may dispose of or otherwise deal with the goods.

5. That no costs shall be awarded against you in respect of an application mentioned in paragraph 3 except where your claim is frivolous and an abuse of your right to make an application.

6. (In this paragraph give particulars of the agreement and the default including:

(a) the date of execution of the agreement by the lessee;

(b) particulars of default:

(i) failure to make payment (specify the amount due and the date the amount became due); or

(ii) permanent removal of the goods from the province without notice to lessor; or

(iii) disposal of debtor's entire interest in the goods

without consent of lessor; or

(iv) lessor's interest placed in jeopardy (give details).)

Further take notice that my address for service is:

Dated at , in the Province of Saskatchewan, this day of , 19 .

_____

Lessor

Part II

(Section 28)

Request for Hearing under a Lease

To the Clerk of the Provincial Court
at the Judicial Centre of
_____.

You are hereby requested to fix a time and place for a hearing by a judge with respect to the Notice of Intention to Seize Goods under a Lease set out above.

I reside at_____.

Dated at_____, in the Province of Saskatchewan this _____ day of _____, 19 __.

_____
Debtor

Form F

(Section 28)

Part I

Notice of Seizure of Goods
under a Lease

To:

Take Notice:

1. That on account of your default under the lease, particulars of which are set out in paragraph 6 ("the agreement"), and because I have reasonable grounds to believe that you have abandoned the goods referred to in the agreement (or my interest in the goods is in jeopardy (give details), as the case may be), I hereby seize the following goods referred to in the agreement:

2. That if you object to seizure of the goods on the grounds that you are legally entitled to retain them, you may apply for a hearing by a judge in the manner set forth in paragraph 3.

3. That you may make an application for a hearing by a judge by delivering Part II of this notice, completed and signed by you, to the clerk of the Provincial Court the judicial centre that is nearest the place where you reside.

4. That unless you apply for a hearing by a judge within 32 days after service of this notice on you, I may dispose of or otherwise deal with the goods.

5. That no costs shall be awarded against you in respect of an application mentioned in paragraph 3 except where your claim is frivolous and an abuse of your right to make an application.

6. (In this paragraph give particulars of the agreement and the default including:

(a) the date of execution of the agreement by the debtor;

(b) particulars of default:

(i) failure to make payment (specify the amount due and the date the amount became due); or

(ii) permanent removal of the goods from the province without notice to lessor; or

(iii) disposal of debtor's entire interest in the goods without

consent of lessor; or

(iv) lessor's interest placed in jeopardy (give details).

Further take notice that my address for service is:

Dated at , in the Province of Saskatchewan, this _ day of , 19 .

_____

Lessor

Part II

(Section 29)

Request for a Hearing upon Seizure
of Goods under a Lease

To the Clerk of the Provincial Court
at the Judicial Centre of
_____.

You are hereby requested to fix a time and place for a hearing by a judge with respect to the Notice of Seizure of Goods under a Lease set out above.

I reside at _____.

Dated at _____, in the Province of Saskatchewan this ____ day of _____, 19 __.

_____
Debtor

The Consumer Credit Consequential Amendment Act

Short title	1.	This Act may be cited as The Consumer Credit Consequential Amendment Act.
Rev. Stat. c.E-14 ss.3 amended	2.	Section 3 is amended by adding the following subsection after subsection (3): "(4) Subsection (1) does not apply with respect to a security agreement to which The Consumer Credit Act applies".
Coming force	3.	This Act comes into force on the day that into The Consumer Credit Act comes into force.

An Act respecting Pawnbrokers

SHORT TITLE AND INTERPRETATION

Short Title

1. This Act may be cited as The Pawnbrokers Act.

Interpretation

2. In this Act:

(a) "market value" means the amount that could be recovered in a wholesale disposition of goods of the same kind in good condition at the place where the pawnbroker carries on business, unless the pawnbroker establishes that the market value of the goods is some other amount;

(b) "minister" means the member of the Executive Council to whom for the time being is assigned the administration of this Act;

(c) "pawnbroker" means a person who carries on the business of

(i) taking by way of pawn or pledge any article for the repayment of money lent; or

(ii) purchasing goods under an agreement or undertaking that those goods may afterwards be repurchased or redeemed;

(d) "pledgor" means a person who delivers an article for pawn to a pawnbroker;

(e) "registrar" means a person appointed under The Public Service Act as registrar for the purpose of this Act;

(f) "shop" means any place where the business of a pawnbroker is carried on.

LICENCING AND BONDING

Carrying on business without licence prohibited

3.-(1) No person shall carry on the business of a pawnbroker unless he is the holder of a subsisting licence under under this Act.

(2) Where a pawnbroker has more than one shop, he shall obtain a licence for each shop.

Licensing of firm or partnership

4.-(1) In this section, the word "firm" means:

(a) a person who is sole proprietor of a business and who uses as his business name a name other than his own or uses his own name with the addition of some other word or phrase;

(b) persons who are associated as partners in a business;

and the name in which the firm carries on its business is called the firm name.

(2) A firm may apply for and obtain a licence as a pawnbroker in the firm name; and no firm shall carry on business as a pawnbroker under a name other than a name shown in its licence.

(3) Every firm shall, in its application for a licence, state the firm name and if a sole proprietor, the name of the sole proprietor or, if a partnership, the names of the partners.

(4) The licence, if granted to the firm, shall be deemed to be issued in the name of the sole proprietor, or in the names of the partners, as the person or persons carrying on business in the firm.

(5) Any change in the membership of a firm or in the name thereof shall be deemed to create a new firm and to terminate any existing licence.

Application for licence

5.-(1) Every application for a licence shall be made to the registrar upon a form provided by him and shall be accompanied by the fee prescribed by the regulations.

(2) Every applicant for a licence or person acting on behalf of the applicant may be required by the registrar to verify by affidavit or otherwise the statements made in the application.

Address for service

6.-(1) Every applicant for a licence shall state in his application for the licence an address for service in Saskatchewan, and, subject to subsection (2), any notice to be served on him under this Act or the regulations shall for all purposes be sufficiently served if it is served personally or is personally delivered at or sent by registered mail to that address.

(2) Where a licensee has pursuant to subsection (3) notified the registrar in writing of a change of address for service, any notice under this Act or the regulations shall be sufficiently served if it is served personally

or is personally delivered at or sent by registered mail to the latest address for service of the licensee.

(3) Every licensee shall, within ten days after a change of his address for service, notify the registrar in writing of his new address for service.

(4) Where a notice is sent to a licensee by registered mail, the notice shall be deemed to have been served on the licensee on the second day after the day of the postmaster's receipt for the envelope containing the notice.

Granting of licence

7. The registrar may grant a licence where, in his opinion, the applicant is suitable to be licensed and the proposed licensing is not objectionable, but the registrar may refuse to issue a licence if after investigation he is of the opinion that the applicant should not be granted a licence.

Licence may be subject to terms, etc.

8.-(1) The registrar may issue a licence subject to such terms, conditions and restrictions as he considers necessary.

(2) Where a licence has been issued, the registrar may, by notice to the licensee:

(a) make the licence subject to such terms, conditions and restrictions;

(b) vary, add to or revoke any terms, conditions and restrictions to which the licence is subject;

as the registrar considers necessary.

(3) Every licensee shall comply with the terms, conditions and restrictions to which his licence is subject.

Expiration of licence

9. Every licence shall expire at midnight on the thirty-first day of March unless previously cancelled.

Suspension or cancellation

10.-(1) The registrar may suspend or cancel a licence upon any ground on which he might of licence have refused to grant the licence or where he is satisfied that the licensee:

(a) has violated any provision of this Act or has failed to comply with any of the terms, conditions or restrictions to which the licence is subject;

(b) has made a material mis-statement in the application for his licence or in any of the information or material submitted by him to the registrar pursuant to section 11;

(c) has entered into a contract of pawn which contains terms which, having regard to the risk and all the circumstances, were unconscionable at the time the contract was made;

(d) has been guilty of misrepresentation, fraud or dishonesty; or

(e) has demonstrated his incompetency or untrustworthiness to carry on the business in respect of which his licence was granted.

(2) Where a licence is suspended or cancelled under subsection (1), the suspension or cancellation is effective on the day on which the notice thereof is served on the licensee.

(3) Where a bond filed under this Act by a person is terminated, the licence of the person is automatically suspended and remains suspended until the person files with the registrar a new bond in the amount and form required.

Registrar require further information

11. The registrar may at any time require further information or material to be submitted by an applicant for a licence or by a licensee within a specified time and may require verification by affidavit or otherwise of any information or material so submitted or previously submitted.

Request for hearing

12.-(1) An applicant for a licence or a licensee who is dissatisfied with a decision of the registrar under this Act may within thirty days after the date of the decision apply in writing to the registrar for a hearing and thereupon the registrar shall fix a date for the hearing which, unless otherwise agreed, shall be held not later than seven days after the date of the receipt of the application for the hearing.

(2) The registrar shall in writing within ten days of the conclusion of the hearing render a decision giving the reasons therefor and shall forthwith send a copy of the decision and reasons by registered mail to the applicant or licensee.

(3) The applicant or licensee may in any hearing before the registrar be represented by counsel.

(4) For the purpose of holding a hearing the registrar:

(a) may require and may take and receive affidavits, statutory declarations and depositions;

(b) may examine witnesses upon oath and may administer the oath;

(c) has the same power that any court has in civil cases to:

(i) summon persons to attend as witnesses and to give evidence;

(ii) enforce the attendance of witnesses; and

(iii) compel witnesses to produce books, documents and things.

Registrar may require bond

13.-(1) The registrar may require any applicant for a licence or any licensee to deliver to him within a specified time a bond in such form and amount as he may require.

(2) Notwithstanding that Her Majesty in right of Saskatchewan has not suffered any loss or damages, every bond delivered to the registrar under subsection (1) shall be construed as being a penal bond and where any such bond is forfeited pursuant to subsection (3), the amount due and owing as a debt to Her Majesty in right of Saskatchewan by the person bound thereby shall be determined as if Her Majesty suffered such loss or damages as would entitle Her Majesty to be indemnified to the maximum amount of liability prescribed by the bond.

(3) Every bond delivered under subsection (1) is forfeited upon demand by the registrar if:

(a) the person in respect of whose conduct the bond is conditioned or any representative or agent of that person has been convicted of an offence:

(i) under this Act; or

(ii) involving fraud or theft or conspiracy to commit an offence involving fraud or theft under the Criminal Code;

(b) final judgment in respect of a claim arising out of a pawn transaction has been entered against the person in respect of whose conduct the bond is conditioned or against any representative or agent of that person;

(c) the person in respect of whose conduct the bond is conditioned commits an act of bankruptcy, whether or not proceedings have been taken under the Bankruptcy Act (Canada); or

(d) a decision has been rendered by the registrar in writing stating in effect that after consideration and investigation of a complaint, he is satisfied that the person in respect of whose conduct the bond is conditioned or any representative or agent of that person:

(i) has violated a provision of this Act or has failed to comply with any of the terms, conditions or restrictions to which his licence is subject; and

(ii) has departed from Saskatchewan, or being out of Saskatchewan remains out of Saskatchewan, or departs from his dwelling house or otherwise absents himself, or in the case of a corporation, the name thereof has been struck off the register of companies;

and such conviction, judgment, order or decision has become final by reason of lapse of time or has been confirmed by the highest court to which any appeal may be taken.

(4) Where a bond secured by the deposit of collateral security with the registrar is forfeited under subsection (3), the registrar may sell the collateral security at the current market price.

(5) The Lieutenant Governor in Council may by order direct that any moneys recovered under a forfeited bond or realized from the sale of any collateral security be:

(a) paid over:

(i) to the local registrar of the Court of Queen's Bench in trust for such persons as may become judgment creditors of the person named in the bond in respect of claims arising out of pawn transactions; or

(ii) to any trustee, custodian, interim receiver, receiver or liquidator of the person named in the bond;

in accordance with and upon the conditions set forth in the order; or

(b) paid over to such persons as may have a claim in respect of a pawn transaction against the person named in the bond or any representative or agent of that person.

(6) Any moneys not expended under the order of the Lieutenant Governor in Council under subsection (4) shall, after the payment of any expenditures incurred by the registrar in connection with the forfeiture of the bond and the determination and settlement of valid claims, be refunded to the surety or obligor under the bond.

Appeal to judge of Court of Queen's Bench

14.-(1) A person who is dissatisfied with a decision of the registrar under section 12 or 13 may, within thirty days from the date of the decision, appeal to a judge of the Court of Queen's Bench who, upon hearing the appeal, may:

(a) dismiss the appeal;

(b) allow the appeal;

(c) allow the appeal subject to terms and conditions;

(d) vary the decision appealed against;

(e) refer the matter back to the registrar for further consideration and decision;

(f) award costs of the appeal;

(g) make such other order as to him seems just.

(2) The appeal shall be by notice of motion and a copy of it shall be served upon the registrar not less than ten days before the day on which the motion is returnable.

(3) Upon receipt of the copy of the notice of motion the registrar shall forward to the appropriate local registrar a certified copy of all documents in the possession of the registrar relating to the decision from which the appeal is taken.

(4) There shall be no further appeal.

PAWNBROKER'S RECORDS

Pawnbroker's book

15.-(1) Every pawnbroker shall, before lending any money in respect of a pawn, enter in a book kept by him for that purpose:

(a) the date on which the pawn was taken;

(b) the full name, address and a description of the person tendering the article for pawn reasonably sufficient to identify the person, including sex, and estimated age, height, complexion and full particulars of identification if produced and, where the person who delivers the article for pawn states that he is the agent of its owner for the purpose of pawning it, the name and address of the owner;

(c) a description of the goods pledged reasonably sufficient to identify it;

(d) the sum lent on the pledge.

(2) The entries shall be numbered in the book consecutively in the order in which the articles are pawned.

Alphabetic list of pledgors

16. Every pawnbroker shall keep up to date during each year a list, arranged alphabetically, of the names of the persons who have pawned articles with him, and shall keep the list for at least one year after it is compiled.

Identification of pawn

17. Each pawn shall be identified by a number that corresponds with the number of the pawn ticket and the entry of the transaction in the pawnbroker's book, and, when the pledge is redeemed, the pawnbroker shall record the amount of interest taken and his charges and shall keep the record for not less than one year after redemption.

PAWN TICKETS

Pawn ticket

18. Upon taking an article in pawn, the pawnbroker shall give the pledgor a pawn ticket containing:

(a) the pawnbroker's name and business address;

(b) the name of the pledgor;

(c) the day, month and year in which the article was taken in pawn;

(d) the number of the entry of the pawn in the pawnbroker's book;

(e) a description of the article pawned;

(f) the sum lent;

(g) the rate of interest charged for the sum lent;

(h) any additional charges.

Pawn ticket not negotiable

19. The rights of a pledgor are not transferable by delivery of a pawn ticket or other document.

Production of pawn ticket

20.-(1) Subject to subsection (2), a pawnbroker is not bound to deliver a pawned article until the pawn ticket for it is produced.

(2) A person who is entitled to redeem a pledge but who is not in possession of a pawn ticket may tender in place of the pawn ticket a statutory declaration stating the reason for being unable to surrender the pawn ticket and stating that he is the owner of the article pawned, or if he is not the owner, stating the basis of his claim to be entitled or authorized to redeem it.

(3) A pawnbroker is not liable to a pledgor for delivering an article pawned to the holder of a pawn ticket or a person tendering a statutory declaration if he has reasonable cause, other than the tender of the pawn ticket or statutory declaration, to believe that such person was the pledgor or authorized by the pawner to redeem the pledge.

(4) Where a pawnbroker has reason to believe that a person, other than the holder of the pawn ticket, is entitled to redeem the pledge, he may refuse to deliver the article for a period not exceeding ten days in order to ascertain the validity of the claim.

REDEMPTION OF PLEDGE

Redemption where $100 or less lent

21.-(1) Where the sum lent upon a pledge is $100 or less, the pledge may be redeemed at any time within:

(a) three months after it was given; or

(b) the period fixed by the parties for the duration of the credit secured by the pledge, or such longer period as they may have agreed upon;

whichever is the longer.

(2) Where a pledge is not redeemed within the time set out in subsection (1), the pawnbroker shall be deemed to have elected to retain the article in full satisfaction of the obligation secured and is entitled to hold such

property free of all rights and interests of the pledgor or persons claiming from or under the pledgor, whose rights or interests are thereafter extinguished.

(3) Upon application by the pledgor within the time set out in subsection (1), a court may extend the period for redemption or order sale of the property and payment of any surplus to the pledgor on such terms and conditions as it thinks appropriate.

Redemption where more than $100 lent

22.-(1) Where the sum lent upon a pledge is over $100, the pledge may be redeemed at any time within:

(a) six months after it was given; or

(b) the period fixed by the parties for the duration of the credit secured by the pledge, or such longer period as they may have agreed upon;

whichever is the longer.

(2) Where a pledge is not redeemed within the time set out in subsection (1), the pawnbroker may:

(a) elect to retain the article; or

(b) waive the pledge and enforce his right as an unsecured creditor.

(3) Where a pawnbroker elects to retain the article, he shall give notice of his intention to retain it to the pledgor and to any other person who he knows has an interest in the article.

(4) A pledgor or other person to whom notice has been given under subsection (3) may redeem the pledge within 15 days of the notice.

(5) Upon application of a pledgor within 15 days after notice is given under subsection (3), a court may extend the period for redemption on such terms and conditions as it thinks appropriate.

(6) If no person entitled to notice under subsection (3) redeems the pledge or objects in writing within 15 days after being so notified, the pawnbroker is deemed to have elected to retain the article in full satisfaction of the obligation secured and is entitled to hold such property free of all rights and interests of the pledgor or persons claiming from or under the pledgor, whose rights or interests are thereafter extinguished.

(7) If a person entitled to notice under subsection (3) objects in writing within 15 days after being so notified, the pawnbroker shall:

(a) dispose of the article by sale in a commercially reasonable manner;

(b) give written notice to that person within five days of the sale of the amount recovered, the costs of the sale, the storage fees, credit charges and the unpaid principal secured by the pledge; and

(c) pay any surplus to the pledgor;

and thereafter any obligation owing by the pledgor to the pawnbroker is extinguished.

(8) Where the pawnbroker has sold an article or has, after a reasonable period of time, failed to sell the article, a court, on application by a pledgor, shall assess the market value of the article and of the reasonableness of the charges and costs of the pawnbroker, and shall order the pawnbroker to pay the amount by which the market value of the goods exceeds the amount secured by the pledge and the reasonable charges and costs of the pawnbroker.

(9) A pawnbroker who elects to waive the pledge and who:

(a) causes the article pawned to be seized and sold under execution or other judgment enforcement measure; or

(b) who obtains any portion of the proceeds of a levy against such article;

shall recover no more than the amount realized from the sale of the article, and shall return any surplus to the pledgor.

Compensation for damage or destruction of pledge

23.-(1) On application by a pledgor, a court may award damages against the pawnbroker

(a) if the article pawned was rendered of less value through the default or neglect or wilful act of the pawnbroker; or

(b) if the article pawned was damaged or destroyed as a consequence of natural hazard, or is lost through theft or destruction by any person;

and the court may order that such an award be deducted

from the amount payable to the pawnbroker or that it be paid in such a manner as the court may direct.

(2) A pawnbroker has an insurable interest in articles pledged.

Application of The Consumer Credit Act

24. Sections 30 to 36 of The Consumer Credit Act apply mutatis mutandis to pawn transactions.

Service

25.-(1) Service of any notice referred to in this Act may be effected:

(a) by personal service;

(b) by sending it by registered mail, postage prepaid, addressed to the person to be served at his last known address.

(2) Service by registered mail is effected when the addressee actually receives a notice or any other written matter, or upon the expiry of four days after the day of registration, whichever is earlier.

GENERAL

Offences

26.-(1) A person who contravenes any provision of this Act or the regulations is liable on summary conviction to a fine of not less than $500, or to imprisonment for a term not exceeding one month, or to both.

(2) No prosecution for an offence under this Act or the regulations shall be commenced after one year from the date of the alleged offence.

Regulations

27. The Lieutenant Governor in Council may make regulations:

(a) prescribing requirements respecting applicants for licences;

(b) prescribing the grounds upon which a licence may be revoked;

(c) prescribing terms, conditions and restrictions to which a license may be made subject;

(d) prescribing fees payable for licences;

(e) prescribing the forms of all licences, pawn tickets or other documents;

(f) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.